

# RESOLUTION

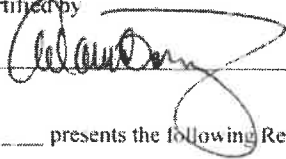
No. 19-327

Date of Adoption JUL 02 2019

Approved as to Form and Legality

Factual content certified by

  
 \_\_\_\_\_  
 JOHN MORELLI, ESQ. CITY ATTORNEY

  
 \_\_\_\_\_  
 Title:

Councilman/woman \_\_\_\_\_ presents the following Resolution:

**RESOLUTION AUTHORIZING THE AWARD OF A PROFESSIONAL LEGAL SERVICES CONTRACT TO ROBERT H. YOSTEMBSKI, ESQ., 205 CORNWALL AVENUE, TRENTON, NEW JERSEY, 08618 THROUGH A FAIR AND OPEN PROCESS IN ACCORDANCE WITH N.J.S.A. 19:44A-20.5 ET SEQ., TO PROVIDE PROSECUTORIAL SERVICES IN TRENTON MUNICIPAL COURT IN AN AMOUNT NOT TO EXCEED \$65,000.00 – RFP2019-22**

**WHEREAS**, the City of Trenton has a need for municipal prosecutorial services with regard to matters concerning Trenton Municipal Court; and

**WHEREAS**, a request for proposal was advertised and six (6) proposals were received and were evaluated by a committee based on the criteria that included experience, understanding of the requirements and cost; and

**WHEREAS**, the proposal of Robert H. Yostembski, Esq., 205 Cornwall Avenue, Trenton, New Jersey 08618 was reviewed by the evaluation committee and recommended that a contract be awarded at a rate of \$215.00 per session in an amount not to exceed \$65,000.00 for the period of July 1, 2019 through June 30, 2020; and

**WHEREAS**, funds in an amount not to exceed \$65,000.00 have been certified to be available contingent upon the adoption of the temporary or final FY2020 Budget in Account No. 0-01- -35-3500-291.

**NOW, THEREFORE, IT IS RESOLVED**, by the City Council of the City of Trenton as follows:

1. The Mayor is hereby authorized to execute a contract with Robert H. Yostembski, Esq. in an amount not to exceed \$65,000.00 to provide municipal prosecutorial services.
2. This contract is awarded through a fair and open process as a "Professional Service" in accordance with N.J.S.A. 19:44A-20.5 et seq. and in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because the contract is for a service performed by a person(s) authorized by law to practice a recognized profession that is regulated by law.
3. A notice of this action shall be printed once in the official newspaper for the City of Trenton and the Resolution and contract shall remain on file in the City Clerk's Office.

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
BLAKELEY	<input checked="" type="checkbox"/>				MUSCHAL	<input checked="" type="checkbox"/>				MCBRIDE	<input checked="" type="checkbox"/>			
CALDWELL	<input checked="" type="checkbox"/>				RODRIGUEZ	<input checked="" type="checkbox"/>								
WILSON	<input checked="" type="checkbox"/>													
HARRISON	<input checked="" type="checkbox"/>				VAUGHN	<input checked="" type="checkbox"/>								

This Resolution was adopted at a Meeting of the City Council of the City of Trenton on

JUL 02 2019

  
 \_\_\_\_\_  
 President of Council

  
 \_\_\_\_\_  
 City Clerk

## PROSECUTORIAL PROFESSIONAL SERVICES CONTRACT

**THIS CONTRACT** is made as of this 19<sup>th</sup> day of August 2019, by and between the City of Trenton, a municipal corporation of the State of New Jersey, hereinafter referred to as the "City" and Robert H. Yostembski, Esquire with principal offices located at 205 Cornwall Avenue, Trenton, NJ, 08618, hereinafter referred to as the "Municipal Prosecutor."

**WHEREAS**, the City maintains a present and anticipated need for persons to serve as independent contractors to represent it in the Trenton Municipal Court as a Municipal Prosecutor; and

**WHEREAS**, the Municipal Prosecutor agrees to perform such services, under the terms and conditions set forth herein with the City being agreeable thereto; and

**WHEREAS**, the City Council of the City of Trenton authorized the award of this contract pursuant to Resolution No.19-327 attached hereto as Exhibit A and incorporated herein by reference (the "Resolution").

**NOW, THEREFORE**, the parties mutually agree as follows:

**1. Scope of Services:** The City agrees to retain the Municipal Prosecutor and the Municipal Prosecutor hereby agrees to provide prosecutorial legal services at the request of and under the general supervision of the Chief Municipal Prosecutor, in accordance with the rules governing the prosecution of cases in the City of Trenton and State of New Jersey. The Municipal Prosecutor shall be responsible for performing all reasonable and necessary tasks related to such services.

**2. Manner of Performance:** The Municipal Prosecutor warrants that the representations made by it regarding the ability and skill level to carry out these services are true. The Municipal Prosecutor further warrants that all services provided hereunder shall be performed in a first-rate, professional and descent manner, in conformity with the responsibilities, demands, and ethics of the legal profession and otherwise to the satisfaction of the Chief Municipal Prosecutor and City Attorney.

**3. Work Assignments:** The Chief Municipal Prosecutor shall be responsible for delegating work assignments and establishing the schedule for prosecutorial work in the Trenton Municipal Court and shall contact the Municipal Prosecutor with work assignments on an as needed basis.

**4. Term:** This agreement shall remain in full force and effect for the period through June 30, 2020 as set forth in the Resolution, unless sooner terminated pursuant to the provisions hereof. In no event shall the term of this Contract be extended without action by the governing body of the City to extend the term.

**5. Compensation:**

(a) All work performed by the Municipal Prosecutor pursuant to the terms hereof shall be billed at the rate of \$215.00 per session. A session is generally estimated to last up to four (4) working hours. The Municipal Prosecutor shall submit itemized monthly bills not later than the 10<sup>th</sup> of each month and shall complete and execute any documents as the City may require for payment. Failure to comply with this section may result in removal from the schedule or termination of this Contract pursuant to Section 9 hereof.

(b) In no event during the term of this Contract shall the Municipal Prosecutor's billings exceed the amount set forth in the Resolution without action by the governing body to increase the contract amount. In the event the Municipal Prosecutor anticipates exceeding the aforesaid contract amount, prior notice shall be given to the City Attorney of the approximate billing cycle in which the contract amount is expected to be exhausted.

**6. Status of contractor:** It is expressly understood by and between the parties hereto that the status of the Municipal Prosecutor retained to carry out the services set forth in this agreement is that of an Independent contractor. It is further understood by and between the parties that it is not intended nor shall it be construed, that the Municipal Prosecutor is an agent, employee, or officer of the City of Trenton.

**7. Notices:** Any notices required to be delivered to either party pursuant to this Contract shall be sent in writing to their respective addresses listed above. The parties shall be responsible for notifying each other of any change of address.

**8. Indemnification.** The Municipal Prosecutor agrees to indemnify, defend and hold the City harmless from and against all liability, loss, damage, or expense, including attorney's fees, which may be incurred or sustained by reason of the Municipal Prosecutor's willful misconduct or negligence in connection with the performance of its obligations under this Contract.

**9. Termination:**

(a) This Contract may be terminated by either party upon ten (10) days prior written notice to the other party in the event of substantial failure by the other party to fulfill its obligations under this Contract through no fault of the terminating party.

(b) This Contract may be terminated by the City without cause upon thirty (30) days prior written notice to the Municipal Prosecutor. The parties shall deal with each other in good faith during the thirty (30) day period after any notice of intent to terminate without cause is given.

**10. Assignment:** This Contract may not be assigned or transferred by either party without the prior written consent of the other party.

**11. Amendment:** This Contract may not be amended or modified except by written agreement signed by both parties, and action by the governing body of the City, where required.

**12. Nondiscrimination:**

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status sex, gender identity or expression, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by NJAC 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, gender identity or expression, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

**13. Integration:** This Contract constitutes the entire agreement between the parties and any representations that may have been made prior to the execution of this Contract are nonbonding, void, and of no effect and neither party has relied on any such prior representations in entering into this Contract.

**14. Enforceability:** If any term or condition of this Contract or its application to any party or circumstance shall be deemed invalid or unenforceable, the remainder of the Contract and its application to other parties and circumstances shall not be affected.

**15. Governing Law:** This Contract shall be governed by the laws of the State of New Jersey.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year first above written.

**Attest:**

  
Municipal Clerk

**CITY OF TRENTON**

By:   
W. REED GUSCIORA, MAYOR

**Witness:**



**MUNICIPAL PROSECUTOR**

By:   
ROBERT H. YOSTEMBSKI, ESQUIRE