

RESOLUTION

WHEREAS, by adoption of Resolution 220-14 on December 9, 2014, the Township Council of the Township of West Orange authorized the execution of an agreement to retain Bryn N. Whittle, Esq. ("Counsel") for the position of Municipal Prosecutor for the period between January 1, 2015 and December 31, 2015 on the terms and conditions set forth in the Agreement annexed hereto as **Attachment "A"**; and

WHEREAS, the Agreement, at Schedule "A" thereof, set forth the rates payable to Counsel for services rendered during the contractual period; and

WHEREAS, the rates set forth in the Agreement were based upon a transition schedule by which the outgoing Prosecutor would for a period of time render services concurrently with Counsel; and

WHEREAS, the transition schedule upon which the Agreement was based has been accelerated such that Counsel has been called upon to render the full scope of services required of the Prosecutor as of February 1, 2015; and

WHEREAS, based upon the foregoing, the Law Department recommends that the Agreement be amended in the form annexed hereto as **Attachment "B"** to provide that Counsel's rate shall be increased from \$500 per week to \$1,000 per week for February 2015, and from \$750 per week to \$1,000 per week for the period between March and April of 2015;

NOW, BE IT HEREBY RESOLVED, by the Township Council of the Township of West Orange that the Mayor be and is hereby authorized to execute the First Amendment, in the form annexed hereto as **Attachment "B,"** to amend the Agreement to provide that Counsel's rate shall be increased from \$500 per week to \$1,000 per week for February 2015, and from \$750 per week to \$1,000 per week for the period between March and April of 2015; and it is further

RESOLVED, that notice of this award shall be published and made available in the Clerk's office in accordance with applicable law.

Karen J. Carnevale,
Municipal Clerk

Jerry Guarino,
Council President

Dated:

Adopted:

I hereby certify funds are available from: _____
Account No.

JOHN O. GROSS, CFO

ATTACHMENT “A”

AGREEMENT FOR RETENTION OF PROSECUTOR

THIS AGREEMENT made and entered into on this 9th day of December, 2014 by and between the **TOWNSHIP OF WEST ORANGE**, a municipal corporation of the State of New Jersey, located at Town Hall, 66 Main Street, West Orange, County of Essex and State of New Jersey, hereinafter called the "TOWNSHIP", party of the first part, and **BRYN N. WHITTLE, ESQUIRE**, Attorney at Law of the State of New Jersey, located at 5 Suzan Court, #C-4, West Orange, County of Essex and State of New Jersey, hereinafter referred to as "COUNSEL", party of the second part.

WITNESSETH THAT:

WHEREAS, the Governing Body of the Township has determined that it is in the best interests of the Township to retain the services of Ms. Whittle to serve as Prosecutor for the Township on the terms set forth herein;

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. The Township hereby retains the services of Bryn N. Whittle as Prosecutor to assist the Township in West Orange Municipal Court for the period January 1, 2015 through December 31, 2015 at the rates set forth on **Schedule "A,"** annexed hereto. COUNSEL shall be an independent contractor for all purposes. COUNSEL shall be responsible to comply with all tax and other obligations of the United States and New Jersey and the Supreme Court of New Jersey. COUNSEL shall not be entitled to any medical or other benefits, including but not limited to retirement benefits. COUNSEL shall comply with all provisions of the Rules of Professional Conduct (RPCs) and other ethical requirements of the State of New Jersey and shall not appear or defend any client in the Superior Court of New Jersey, Essex County, Criminal Division or the West Orange Municipal Court.

2. COUNSEL will not seek nor be entitled to reimbursement for any costs and expenses such as postage, copying, mileage, meals, secretarial, parking, travel, telephone, faxes, computer usage, received or delivery of documents.

3. COUNSEL may seek reimbursement for extraordinary expenses such as the cost of transcripts or hiring experts. Counsel will not incur any such expenses without the prior written approval of the Township Attorney.

4. COUNSEL's responsibilities shall include all pre-trial preparation, discovery and trial, to the extent necessary, for all criminal and related prosecutions in The Municipal Court of the Township and any appeals therefrom.

5. COUNSEL shall coordinate all efforts with the Township Attorney and keep him advised as to any matters.

6. COUNSEL recognizes that any and all approval for engagement of services must come from the Governing Body of the Township, and that no services, work or any efforts relative to this Agreement shall be commenced until the Governing Body adopts a duly authorized Resolution accompanied by a Certificate of Available Funds.

7. COUNSEL is hereby placed on notice that the Billing Guidelines of the Township shall apply to this Agreement for professional services. COUNSEL is further noticed that no Department Head, individual member of the Governing Body, or any agent, servant or employee of the Township possesses any lawful authority to: (a) engage the rendition of services or the performance of work; (b) authorize the continuation of services or work beyond the amount specifically approved in the Resolution and Certificate of Available Funds; or to (c) represent that future funds will be available as compensation for current services. Any such acts shall be deemed ultra vires and beyond the scope of any authority that individual may possess. No bills, statement or vouchers for any amount exceeding that originally approved will be honored or paid by the Township, irrespective of whether such services were actually performed.

8. During the term of this agreement, COUNSEL shall maintain professional liability malpractice insurance coverage with an insurance company licensed and authorized to do business in the State of New Jersey with coverage not less than \$1,000,000. COUNSEL shall provide the Township Attorney and Municipal Clerk with proof of a valid certificate of insurance listing the TOWNSHIP as a certificate holder and additional Insured. To the extent that this insurance coverage is scheduled to lapse at any time before the end of the contract, COUNSEL shall provide proof of renewal or new Insurance coverage no later than thirty (30) days before the termination of the current coverage. Failure to provide proof of insurance shall be grounds for termination.

9. COUNSEL shall be responsible for coverage of all sessions of the West Orange Municipal Court. To the extent that COUNSEL is ill or has an emergent matter before another Court, she shall be solely responsible to obtain timely coverage for all West Orange sessions at her sole cost and expense. Any attorney who handles any absences must be an Attorney at Law of the State of New Jersey in good standing with the same insurance coverage as COUNSEL. If COUNSEL misses three (3) or more consecutive sessions or a total of five (5) sessions during the term of this Agreement, the Township may terminate this Agreement.

10. The TOWNSHIP or COUNSEL may terminate this Agreement at any time in their sole discretion on thirty (30) days' written notice to the Municipal Clerk with a copy to the Township Attorney. If terminated by COUNSEL, COUNSEL shall continue to provide services and cover all sessions during the 30-day termination period.

11. The provisions of this agreement are subject to the limitations of provisions of the New Jersey Tort Claim Act, N.J.S.A. 59:2-1 et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

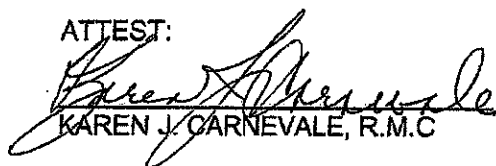
12. This Agreement shall be governed by the laws of the State of New Jersey without regard to principles of conflict of laws. All contract claims under this agreement shall be subject

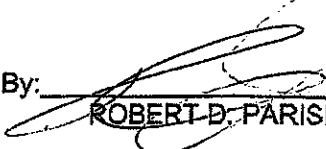
to and governed by the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1
et seq.).

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

TOWNSHIP OF WEST ORANGE

ATTEST:


KAREN J. CARNEVALE, R.M.C

By: 

ROBERT D. PARISI, MAYOR

WITNESS:

By: _____

BRYN N. WHITTLE, ESQ.

to and governed by the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.).

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

TOWNSHIP OF WEST ORANGE

ATTEST:

KAREN J. CARNEVALE, R.M.C

By: _____
ROBERT D. PARISI, MAYOR

WITNESS:

By: Bryn N. Whittle
BRYN N. WHITTLE, ESQ.

SCHEDULE A

PERIOD	RATE
January 2015 – February 2015	\$500/week
March 2015 – April 2015	\$750/week
May 2015 – December 2015	\$1,000/week

4826-0781-4176, v. 1

ATTACHMENT “B”

FIRST AMENDMENT TO AGREEMENT FOR RETENTION OF PROSECUTOR

THIS FIRST AMENDMENT TO AGREEMENT FOR RETENTION OF PROSECUTOR

(the "First Amendment"), made and entered into on this ____ day of March, 2015 by and between the **TOWNSHIP OF WEST ORANGE**, a municipal corporation of the State of New Jersey, located at Town Hall, 66 Main Street, West Orange, County of Essex and State of New Jersey, hereinafter called the "TOWNSHIP", party of the first part, and **BRYN N. WHITTLE, ESQUIRE**, Attorney at Law of the State of New Jersey, located at 5 Suzan Court, #C-4, West Orange, County of Essex and State of New Jersey, hereinafter referred to as "COUNSEL", party of the second part.

WITNESSETH THAT:

WHEREAS, the Township and Counsel entered into an Agreement for Retention of Prosecutor dated December 9, 2014 (the "Agreement"), whereby Counsel was retained to serve as Prosecutor for the Township for the period between January 1, 2015 through December 31, 2015; and

WHEREAS, the Agreement, at Schedule "A" thereof, set forth the rates payable to Counsel for services rendered during the contractual period; and

WHEREAS, the rates set forth in the Agreement were based upon a transition schedule by which the outgoing Prosecutor would for a period of time render services concurrently with Counsel; and

WHEREAS, the transition schedule upon which the Agreement was based has been accelerated such that Counsel has been called upon to render the full scope of services required of the Prosecutor as of February 1, 2015;

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Schedule A of the Agreement is hereby amended to provide that Counsel's rate shall be increased from \$500 per week to \$1,000 per week for February 2015, and from \$750 per week to \$1,000 per week for the period between March and April of 2015.

2. Except as modified by this First Amendment, the Agreement and all covenants, agreements, terms, provisions, and conditions thereof shall remain in full force and effect and are hereby ratified and affirmed. In the event of any conflict between the terms contained in this First Amendment and the terms contained in the Agreement, the terms herein shall supersede and control the obligations and liabilities of the parties.

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

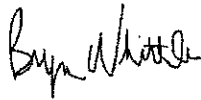
TOWNSHIP OF WEST ORANGE

ATTEST:

KAREN J. CARNEVALE, R.M.C

By: _____
ROBERT D. PARISI, MAYOR

WITNESS:

By:  _____
BRYN N. WHITTLE, ESQ.