

Subject: Resolution #675 - Approval of Agreement with Gunderson Elliott PLLC for Prosecution Services for Ruston Municipal Court

Proposed Council Action:

Consider Approval of Resolution Authorizing Mayor to Sign Agreement for Prosecution Services

Dept. Origin: Mayor's Office

Prepared by: Jennifer Robertson
 City Attorney's Office

For Agenda of: February 20, 2018

Exhibits: Attached Resolution and Agreement

	Initial & Date
Concurred by Mayor:	_____
Approved/form by City Atty:	<u>JSR/2-15-18</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

The City has a contract for Prosecution Services. The current prosecutor requested an updated and increased contract. In order to determine the market rate for these services, the City issued a Request for Proposals (RFP) for prosecution services in October of 2017. That RFP did not receive adequate response, so the timeline was extended and the RFP re-issued in November of 2017. The firm Gunderson Elliot PLLC submitted a proposal for services for all services to be provided for a flat \$3,500 per month. Gunderson Elliott PLLC currently serve as prosecutors for Lakewood, University Place, Steilacoom and Du Pont. The current City Prosecutor did not submit for the contract. If any councilmember would like a copy of the proposal, please let staff know and we will provide it.

The current City Prosecutor's term will end at the end of February 2018, so entry into a new contract is needed to ensure continuity of services. The contract attached to the Resolution was drafted by the City and has been signed by Gunderson Elliot PLLC. Services would start on March 1, 2018.

FISCAL CONSIDERATION

The total cost for this contract is \$3,500 to be paid monthly. Additional expenses may be added for expert witness fees, legal messenger services, court filing fees, copying costs in the amount of \$0.15 per page and for postage.

RECOMMENDATION / MOTION

If the City Council desires to authorize this agreement, it may do so by passing the attached Resolution #675.

MOTION: I move passage of Resolution #675 authorizing the Mayor to execute an agreement with Gunderson Elliott PLLC for Prosecution Services effective March 1, 2018.

RESOLUTION NO. 675

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH GUNDERSON ELLIOTT PLLC FOR PROSECUTION SERVICES.

WHEREAS, the City has need for prosecution services; and

WHEREAS, the City issued a Request for Proposals (RFP) for prosecution services in the fall of 2017; and

WHEREAS, the firm Gunderson Elliot PLLC submitted a proposal for services for all services to be provided for a flat \$3,500 per month. Gunderson Elliott PLLC currently serve as prosecutors for Lakewood, University Place, Steilacoom and Du Pont and is qualified for this Agreement; and

WHEREAS, the current City Prosecutor's term will end at the end of February 2018 and the new Contract with Gunderson Elliot PLLC would start on March 1, 2018; and

WHEREAS, the City Council finds it in the public interest to authorize the Mayor to execute the proposed Agreement substantially the form that is attached to this Resolution as Exhibit "1";

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Authorization of Agreement. The Mayor is hereby authorized to execute the Agreement with Gunderson Elliott PLLC for prosecution services in substantially the form attached hereto as Exhibit "1".

RESOLVED this 20th day of February, 2018.

APPROVED:

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

RESOLUTION NO.: 675

EXHIBIT “1”

Prosecution Services Agreement

Between

City of Ruston

and

Gunderson Elliott PLLC

**LEGAL SERVICES AGREEMENT FOR PROSECUTING ATTORNEY SERVICES
BETWEEN CITY OF RUSTON AND GUNDERSON ELLIOTT, PLLC**

THIS AGREEMENT is entered into by and between the City of Ruston, hereinafter referred to as the "City" and the law firm Gunderson Elliott PLLC, hereinafter referred to as the "Prosecuting Attorney."

WHEREAS, the City of Ruston has a need for prosecuting attorney services; and

WHEREAS, the City issued a Request for Proposals seeking these services and Prosecuting Attorney responded to the Request and the City desires to contract with Prosecuting Attorney for these services; and

WHEREAS, the parties desire to define the services to be provided by the Prosecuting Attorney, and the costs associated therewith;

NOW, THEREFORE, The parties hereto agree as follows:

TERMS.

Section 1. Term. The term of this Agreement shall be from the date this Agreement is executed by both parties, until terminated by either party pursuant to the terms hereof. Either party may terminate this Agreement with or without cause, by providing sixty (60) days written notice to the other party.

Section 2. Duties. The Prosecuting Attorney is responsible for and manages the City's legal affairs. The services fall into two categories, criminal prosecution in municipal court and civil infraction hearings as described below.

A. **Criminal Prosecution.** The Prosecuting Attorney shall be responsible for all aspects of prosecution in the Ruston Municipal Court, including:

- 1) making filing decisions on criminal cases, with input from City of Ruston Police;
- 2) advising City police on the conduct of investigations, trial preparation, seizures, and related matters;
- 3) interviewing witnesses and victims of crimes;
- 4) advising victims regarding their rights and responsibilities;
- 5) representing the City at arraignments, pretrial hearings, bench and jury trials, and review hearings and appeals in connection with criminal misdemeanor and gross misdemeanor cases and certain contested infraction matters;
- 6) making appropriate sentencing recommendations and decisions to the court;
- 7) preparing and presenting legal memoranda, subpoenas, jury instructions, and other related materials, including handling any resulting appeals;
- 8) providing legal research, training, and assistance to City police in criminal matters, including statutory interpretation, enforcement issues, and case decisions; and
- 9) creating and maintaining appropriate files.

B. **Litigation of Civil Infractions.** In addition to Prosecution Services, the City may have an occasional civil infraction matter to be filed and heard in the Municipal Court. In

such case, the Prosecuting Attorney will also be expected to represent the City in the Municipal Court hearings for civil infractions, including preparing the infraction filings, gathering evidence and representing the City at the hearing and handling any resulting appeal. The Ruston City Attorney (currently Northwest Urban Law, PLLC) handles all civil code enforcement, so this work may involve working with the Ruston City Attorney.

- C. Conflict of Interest – Outside Counsel. If any case results in the Prosecuting Attorney having a conflict of interest under RPC 1.8, then the Prosecuting Attorney shall immediately let the City know about this conflict and will assist the City in promptly obtaining outside conflict counsel. The Prosecuting Attorney will not bear the costs for furnishing conflict counsel which shall be paid by the City.

Section 3. Compensation.

A. Prosecuting Attorney Fees. The City shall pay the Prosecuting Attorney the amount of three thousand five hundred dollars (\$3,500) per month for all prosecution services, including legal fees for attorney, paralegals, staff, etc. This is the maximum amount due to Prosecuting Attorney each month for the services described above with the exception of reimbursable costs as described in 3(C) below.

B. Assistant Prosecutors. The Prosecuting Attorney shall be responsible for providing backup coverage in the event of his or her absence, at no additional cost to the City. Such back-up coverage shall only be provided by attorneys, licensed to practice and do business in the State of Washington, and who have been previously approved by the City.

C. Reimbursable Costs. In addition to the \$3,500 per month fee, the Prosecuting Attorney shall be reimbursed for costs and advances for such items such as legal messenger services, court filing fees, copying costs in the amount of \$0.15 per page and for postage, and expert witness fees as described in 3(D) below.

D. Expert Witnesses. If, in the opinion of the Prosecuting Attorney, an expert witness, or other professional service provider, is needed in order to adequately prepare a prosecution, the Prosecuting Attorney shall discuss the matter with the City, including a firm estimate for the costs of the expert witness and need for the testimony. After said discussion, if the Prosecuting Attorney still believes such an expert is necessary, the amount shall be paid by the City. The City shall pay expert witness expenses within 60 days of receipt of an invoice from the Prosecuting Attorney.

Section 4. Equipment and Other Resources. The Prosecuting Attorney shall provide, at no cost to the City, its own cell phone, access to standard on-line computer legal research services, long distance telephone, cell phone service, mileage, etc. If the Prosecuting Attorney is asked to perform a task involving legal research outside Washington or the federal courts, he/she shall notify the City in writing prior to initiating the task and receive permission to incur this additional cost. The cost of such legal research shall be documented and attached to the monthly statement provided to the City.

Section 5. Entire Agreement. This Agreement incorporates the entire agreement between the parties with regard to the legal work to be performed on behalf of the City, and the rates to be charged therefore.

Section 6. Required Insurance.

A. Professional Liability. The Prosecuting Attorney will maintain professional liability insurance throughout the duration of this Agreement in the minimum amount of \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate.

B. Automobile Liability. In addition to professional liability insurance, the Prosecuting Attorney will maintain Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage. Such Automobile Liability insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

C. Verification of Coverage. The Prosecuting Attorney shall furnish the City with original certificates evidencing the insurance requirements of the Prosecuting Attorney before commencement of the work.

Section 7. Independent Contractor. The Prosecuting Attorney is an independent contractor with respect to the services to be provided under this Agreement. The parties to this contract, in the performance of it, will be acting in their individual capacities and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be considered or construed to be the employees or agents of the other party for any purpose whatsoever. The City shall not be liable for, nor obligation to pay to the Prosecuting Attorney or any of its employees, 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 Prosecuting Attorney which may arise as an incident of the Prosecuting Attorney performing services for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the Prosecuting Attorney.

Section 8. Ownership of Work Product. All data, materials, reports, memoranda, and other documents developed by the Prosecuting Attorney under this Agreement specifically for the City are the property of the City and shall be forwarded to the City upon request provided all outstanding balances due to Prosecuting Attorney are current. The City may use such documentation as the City deems fit. The City agrees that if such data, materials, reports, memoranda and other documents prepared by the Prosecuting Attorney are used for purposes other than those intended in this Agreement, that the City does so at its sole risk.

If the City establishes “Dropbox” or Cloud access and/or email access on its system for the Prosecuting Attorney, then the Prosecuting Attorney shall utilize the file system for storage of all electronic files and/or email accounts for all City of Ruston business that is conducted under this Agreement.

Section 9. Indemnification/Hold Harmless. The Prosecuting Attorney shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any

and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Prosecuting Attorney in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City agrees to indemnify, hold harmless, and defend the Prosecuting Attorney and its officers, employees and agents from and against any and all claims, judgments or awards of damages, arising out of or resulting from the acts, errors or omissions of the City, its elected and appointed officials, employees and agents except for injuries and damages caused by the sole negligence of the Prosecuting Attorney.

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 property caused by or resulting from the concurrent negligence of the Prosecuting Attorney and the City, its officers, officials, employees, and volunteers, the Prosecuting Attorney's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Prosecuting Attorney's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Prosecuting Attorney's waiver of immunity under the Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 10. Rules of Professional Conduct. All services provided by the Prosecuting Attorney under this Agreement will be performed in accordance with the Rules of Professional Conduct for attorneys established by the Washington Supreme Court.

Section 11. Subcontracting or Assignment. The Prosecuting Attorney may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City.

EXECUTED this ____ day of February, 2018.

CITY OF RUSTON

GUNDERSON ELLIOTT, PLLC

Bruce Hopkins, Mayor

Ivar Gunderson 2/14/2018
By: Ivar Gunderson
Its: Managing Member

ATTEST

Judy Grams, City Clerk

APPROVED AS TO FORM

Jennifer Robertson

Jennifer Robertson, Ruston City Attorney