

RESOLUTION NO. 17-1171

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON RENEWING REQUEST FOR LEGAL SERVICES PROVIDERS TO SUBMIT PROPOSALS TO THE CITY AND APPROVING INTERIM LEGAL SERVICES FOR THE CITY

WHEREAS, The City needs to obtain legal services; and

WHEREAS, the City Council is the contracting authority for legal services for the City; and

WHEREAS, the City of Black Diamond is without Council Approved legal services; and

WHEREAS, the City Council by Resolution 16-1092 on April 21, 2016 authorized the Council President and Mayor Pro Tempore to investigate and propose for Council approval a contract to provide interim legal services for the City; and

WHEREAS, the Council did approve a legal services contract on July 21, 2016 and the mayor interfered with the keeping and performance of this contract and instead attempted to contract with a different law firm; and

WHEREAS, the mayor's work with a law firm that is not Council-approved has interfered with the City's ability to retain properly approved legal services since that time; and

WHEREAS, the City Council intends to retain interim legal services while it considers the City's options for legal services in the future;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The City Council approves a Legal Services contract with Land Use and Property Law, PLLC and Glenn & Associates, P.S. as proposed by the Council President and Mayor ProTempore to provide interim legal services for the City.

Section 2. The City Council authorizes the Council President and Mayor Pro Tempore to prepare a request for proposal (RFP) for long term contract legal services for the City, and requests that the administration perform the normal function of advertising this RFP after it is prepared.

PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASIDNGTON, AT A REGULAR MEETING THEREOF, THE 18th DAY OF MAY 2017.

CITY OF BLACK DIAMOND

DENIED

Carol Benson, Mayor

Attest:

Invalid - The President & Mayor pro-Tem have no authority to contract for legal services,

Brenda L. Martinez, City Clerk

LAW OFFICES
OF
GLENN & ASSOCIATES, P.S.
A PROFESSIONAL SERVICES CORPORATION

DANIEL O. GLENN

2424 EVERGREEN PARK DRIVE S.W.
OLYMPIA, WASHINGTON 98502

PHONE (360)943-7700
FAX (360)943-7721

Tamie Deady, Position No. 1 tdeady@ci.blackdiamond.wa.us
Erika Morgan, Position No. 2 emorgan@ci.blackdiamond.wa.us
Janie Edelman, Position No. 3 jedelman@ci.blackdiamond.wa.us
Brian Weber, Position No. 4 bweber@ci.blackdiamond.wa.us
Pat Pepper, Position No. 5 ppepper@blackdiamondwa.gov

24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

RE: Professional Legal Services

Council Members:

I understand that there is the potential opportunity to provide legal services to your City. Please consider this to be an expression of interest in the provision of such services concurrently with Ms. Koler's firm of Land Use & Property, LLC.

As background, I have been a member of the Washington State Bar since 1972. Over those years, I have practiced in primarily the civil law area. As to my municipal law experience, a brief summary is as follows:

A. In 1974, I was given the opportunity to begin representing the City of Elma as its City Attorney. I continue in that position.

B. In 1975, I was given the opportunity to assume the same roles for the City of Montesano. I served in that position until 2015 when I resigned from the position.

C. In 1978, I was given the same opportunity to serve the City of Oakville as its attorney, again a position I

continue to have the opportunity to fulfill.

D. Then, in 1982 I was contacted by the then serving Mayor of the City of McCleary and appointed to serve as its City Attorney which I continue to serve.

E. In 1992, the same opportunity to serve occurred in relation to the town of Steilacoom. I was appointed as its town attorney. Due to time constraints, my former partner, Larry Hoffman gradually assumed the primary role and when he left my firm, we agreed that the role should remain with him which it has.

It is my understanding that your City operates under the provisions of RCW Chapter 35A. As to that area, during my tenure as their attorney, all of these cities transitioned from fourth class municipalities to Optional Municipal Code cities.

From the professional association standpoint, I was chosen to serve several years on the Board of the Washington State Municipal Attorneys Association. I also served as the Association's president.

If you have any questions, please feel free to direct them to me.

Yours truly,

GLENN & ASSOCIATES, P.S.

Daniel O. Glenn

DG/le

LAND USE & PROPERTY LAW

6659 Kimball Drive, Suite B-201
Gig Harbor, WA 98335
Tel. (253) 853-1806
Jane Koler - Mark Adams of Counsel
jane@jkolerlaw.com - mark@landuselawwa.com

A Professional Limited Liability Company

zoning

land use

real property

environmental

May 12, 2017

CITY OF BLACK DIAMOND COUNCILMEMBERS:

Tamie Deady, Position No. 1
Erika Morgan, Position No. 2
Janie Edelman, Position No. 3
Brian Weber, Position No. 4
Pat Pepper, Position No. 5

tdeady@ci.blackdiamond.wa.us
emorgan@ci.blackdiamond.wa.us
jedelman@ci.blackdiamond.wa.us
bweber@ci.blackdiamond.wa.us
ppepper@blackdiamondwa.gov

24301 Roberts Drive
P.O. Box 599
Black Diamond, WA 98010

RE: Professional Legal Services

Dear Councilmembers:

I would like to provide legal services for the City of Black Diamond. For the past 31 years in my law practice I have focused exclusively on land use, municipal law, and real property issues. In doing such work, I represent individuals interfacing with government agencies and assist clients faced with compliance and permitting actions. I also assist businesses and individuals with obtaining all types of zoning and land use permits, as well as business licenses.

I graduated from Whitman College where I majored in English. I then went to the University of Washington, where I received my M.A. in Art History. After teaching school for several years, I attended law school and graduated from the University of Puget Sound Law School (now Seattle University School of Law) cum laude. After law school I clerked at the Washington State Court of Appeals for Judge Harold Petrie.

After I finished my clerkship at the Court of Appeals, I went to work at the Bremerton City Attorney's office, where I primarily addressed land use issues. After working at the City Attorney's office, I joined a downtown Seattle law firm, Casey and Pruzan. I worked there for over 14 years and became a partner. I also specialized in land use issues at Casey and Pruzan.

Black Diamond City Council
May 12, 2017
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I address municipal law issues on a daily basis. In the 1990s, the City of Bremerton contracted with me to handle many lawsuits involving land use issues and other municipal claims, including growth management appeals, shoreline appeals, 42 USC Section 1983 claims, nuisance and zoning enforcement actions. For several years I served as the City Attorney for the Town of Lyman, Washington.

In recent years, I have advised clients primarily about critical areas, the Subdivision Act, the Shoreline Management Act, the State Environmental Policy Act, and the Clean Water Act. I have practiced before quasi-judicial tribunals such as local hearing examiners, the Pollution Control Hearings Board, the Shoreline Hearings Board, and the Growth Management Hearings Board.

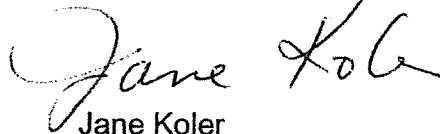
I have also had many successful trials in the King County Superior Court, Kitsap County Superior Court, and Pierce County Superior Court, as well as appeals at the Washington State Court of Appeals. I was one of the attorneys involved in *Guimont v. Clarke*, 121 Wn.2d 586 (1996), which invalidated mobile home relocation fees; and *Berst v. Snohomish County*, 114 Wash.App. 245 (2002), which invalidated a Forest Practices Act moratorium because it violated the due process rights of the property owners.

I am very active in the Gig Harbor community and served on the Chamber of Commerce Board of Directors and its Executive Board; and, presently, I serve on the Boards of the Gig Harbor Film Festival and the Harbor History Museum.

I would enjoy the opportunity to provide legal services to the City of Black Diamond.

Very truly yours,

LAND USE & PROPERTY LAW, PLLC


Jane Koler

JRK/jl

Attachment

JANE KOLER

LAND USE & PROPERTY LAW, PLLC
6659 Kimball Drive, Suite B-201
Gig Harbor, WA 98335
Office: (253) 853-1806 ♦ E-Mail: jane@jkolerlaw.com

EDUCATION:

1982 - J.D. <i>Cum Laude</i>	UNIVERSITY OF PUGET SOUND Tacoma, Washington
1976 - M.A., Art History	UNIVERSITY OF WASHINGTON Seattle, Washington
1970 - B.A., English	WHITMAN COLLEGE Walla Walla, Washington

WORK EXPERIENCE:

2001 - Present	LAND USE & PROPERTY LAW, PLLC 6659 Kimball Drive, Suite B-201 Gig Harbor, WA 98335 Practice concentrates on land use and property law.
1986 – 2000, Associate 1990 - 2000, Partner	CASEY & PRUZAN 18 th Floor Pacific Building 720 Third Avenue Seattle, WA 98104-1866 Practice concentrates on land use and property law.
1984 - 1986	DEPUTY CITY ATTORNEY City of Bremerton
1983 - 1984	LAW CLERK TO HON. HAROLD PETRIE Washington State Court of Appeals, Division II
1975 - 1977, English Teacher 1976 - 1977, Head of Dept.	NOTRE DAME HIGH SCHOOL 455 Palma Drive Salinas, CA 93901

**PROFESSIONAL AND CIVIC
ACTIVITIES:**

Current Member	Washington State Bar Association
Current Member	Environmental and Land Use Law Section
2012 to Present	Gig Harbor Film Festival Board
2012 to Present	Harbor History Museum Board
2004 to Present	Gig Harbor Midday Rotary
2005 - 2009	Gig Harbor Chamber of Commerce Board
2005 - 2008	Gig Harbor Chamber of Commerce Executive Board

SPEAKER:

National Business Institute
Continuing Legal Education Programs:

April 14, 1999	◆ Hazardous Waste in Washington Seattle, Washington
January 27, 1999	◆ Land Use Update in Washington Seattle, Washington
April 22, 1998	◆ Major Land Use Laws in Washington Seattle, Washington

REFERENCES:

Will be submitted upon request.

CITY OF BLACK DIAMOND PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into by and between:

CITY OF BLACK DIAMOND, WASHINGTON (the "City")
Physical Address: 24301 Roberts Drive
Mailing Address: P.O. Box 599
Black Diamond, WA 98010
Contact: City Administrator

and

Land Use & Property Law, PLLC ("Consultant")
6659 Kimball Drive, Suite B-201
Gig Harbor, WA 98335
Contact: Jane Koler
Phone: (253) 853-1806
E-Mail: jane@jkolerlaw.com

Tax ID No.: 46-2492435

For professional services in connection with the provision of legal services.

TERMS AND CONDITIONS

1. Services by Consultant

1.1 Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by Consultant shall not exceed the Scope of Work nor shall the Consultant be entitled to a greater amount of compensation as that provided in this Agreement without the prior written authorization of the City.

1.2 The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to this Agreement.

1.3 Consultant represents and warrants that it, and its staff, have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

2. Schedule of Work

2.1 Consultant shall perform the services described in the Scope of Work as in Exhibit "A" in a timely manner.

2.2 Consultant is authorized to proceed with services upon execution of this Agreement and any services performed prior to the execution of this Agreement, as approved by the City Administrator, are hereby ratified and authorized.

3. Compensation and Payment

3.1 Hourly Fees. The City shall pay the Consultant for work performed at the hourly rate of \$200.00, with amount for subsequent years increased pursuant to Seattle-Tacoma-Bremerton CPI-U, with minimum increase of 2% per year and maximum increase of 4% per year. Associates and Legal Assistants will bill only with advance permission of the Mayor or City Administrator. The hourly rate for Consultant's Associates is \$200.00, and for Consultant's Legal Assistants is \$75.00. The parties will renegotiate the Consultant's compensation for the year 2018 according to this paragraph on or before December 1, 2017, but no amendment to this Agreement shall be effective unless it is reduced to writing.

3.2 Compensation for Consultant Review of Development Proposals. On all projects for which the City is able to seek reimbursement pursuant to an ordinance or other Council-adopted agreement that authorizes such reimbursement from a development proponent for the City's costs, the Consultant shall charge its regular hourly rates as specified in Section 3.1. The types of projects included in this category are, but are not limited to: LID's, ULID's, annexations not initiated by the City, development agreements and associated implementing permit and plan approval, latecomer's agreements, and all other projects for which the City is entitled to receive reimbursement from a third party.

3.3 Reimbursable Costs. The Consultant shall be reimbursed for costs and advances for such items, such as legal messenger services, court filing fees, large copying or mailing projects, and other similar expense items.

3.4 Consultant shall maintain time and expense records and provide them to the City monthly, along with monthly invoices, in a format acceptable to the City for work performed to that date of the invoice.

3.5 All invoices shall be paid by City warrant within sixty (60) days of actual receipt by the City of an invoice conforming in all respects to the terms of this Agreement.

3.6 Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Consultant shall make copies available to the City on request.

3.7 If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. The City may withhold payment for such work until the work meets the requirements of the Agreement.

4. Term

4.1 This Agreement shall commence on the date this Agreement is executed by both parties. It is acknowledged that the Consultant has been asked to perform work prior to commencement of the Agreement, and that payment shall be made for these services, as long as the invoice is approved by the City Administrator. This Agreement shall be effective until terminated as provided in Section 6 herein.

5. Discrimination and Compliance with Laws

5.1 Consultant agrees not to discriminate against any employee or applicant for employment, or any other person in the performance of this Agreement, because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

5.2 Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

5.3 Any violation of this Section 5 shall be a material breach of this Agreement and grounds for immediate cancellation or termination of the Agreement by the City, in whole or in part, and may result in Consultant's ineligibility to conduct further work for the City.

6. Termination of Agreement

6.1 Either party may terminate this Agreement with or without cause, by providing thirty (30) days written notice to the other party. The City also reserves the right to terminate this Agreement at any time, without cause, by giving Consultant notice in writing ten (10) days prior to the termination date. In the event of termination, all finished or unfinished reports, or other materials prepared by Consultant pursuant to this Agreement, shall be submitted to the City. Consultant shall be entitled to compensation for any satisfactory work completed on the project prior to the date of termination.

7. Standard of Care

7.1 Consultant represents and warrants that it has the requisite training, skill, and experience necessary to provide the services required by this Agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances. Consultant understands and agrees that the services rendered pursuant to this Agreement are for

the sole exclusive benefit of the City and that no third party shall have authority to authorize, approve, direct, or control any of the services rendered to the City pursuant to this Agreement.

8. Indemnification/Hold Harmless

8.1 Consultant shall indemnify, and hold the City, its officers, employees, agents and volunteers harmless from all reasonable claims, injuries, damages, losses, or suits, including attorney fees, arising directly or indirectly out of or resulting from the negligent acts, errors, or omissions of Consultant in performance of this Agreement, except for injuries and damages caused by the negligence of the City. Provided, however, that if any such claims, injuries, damages, losses or suits result from the concurrent negligence of Consultant and the City and the City's officers, employees, agents or volunteers, it is expressly agreed that Consultant's obligations and indemnity under this paragraph shall be effective only to the extent of Consultant's negligence.

9. Insurance

9.1 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 Consultant, its agents, representatives, or employees.

9.2 Consultant shall procure and maintain the following types and amounts of insurance:

- a. 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. This insurance shall have a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- b. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- c. Professional Liability insurance appropriate to Consultant's profession, with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

9.3 The Automobile Liability, Worker's Compensation, and Professional Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- a. Consultant's insurance coverage shall be primary insurance vis-à-vis the City. Any insurance, self-insurance, or insurance pool coverage

maintained by the City shall be excess over Consultant's insurance and shall not contribute with it.

- b. Consultant's insurance shall not be cancelled, except after thirty (30) days prior written notice by USPS Certified Mail or Priority Mail, return receipt requested, has been given to the City.

9.4 If allowed under Consultant's coverage for professional liability coverage, the City shall be named as an additional insured. The City shall be named as an additional insured under Consultant's Automobile Liability insurance policy with respect to the work to be performed for the City pursuant to this Agreement.

9.5 Declaration pages issued by the insurance carriers for the policies mentioned in this Section 9 showing such insurance to be in force shall be filed with the City not less than ten (10) days following both parties signing this Agreement and before commencement of work. In addition, the City may request, in writing, a full copy from Consultant of any insurance policy Consultant must procure and maintain pursuant to this Agreement and Consultant must provide such copy to the City within ten (10) days of Consultant's receipt of the City's request. Any policy or required insurance written on a claims-made basis shall provide coverage as to all claims arising out of the services performed under this Agreement, and for three (3) years following completion of the services to be performed. It shall be a material breach of this Agreement for Consultant to fail to procure and maintain the insurance required by this Section 9, or to provide the proof of such insurance to the City as provided for in this Agreement.

10. Assigning or Subcontracting

10.1 Consultant shall not assign, transfer, subcontract, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the sole discretion of the City.

11. Independent Contractor

11.1 Consultant and its sub-consultants are, and shall be at all times during the term of this Agreement, be independent contractors.

12. Notice

12.1 All notices required by this Agreement shall be considered properly delivered: when personally delivered, when received by facsimile, when received by e-mail, or on the third day following mailing, postage prepaid, USPS Certified or Priority Mail, return receipt requested, to:

City: City Administrator
City of Black Diamond
P.O. Box 599
Black Diamond, WA 98010
Fax: (360) 886-2592

Consultant: Jane Koler
Land Use & Property Law, PLLC
6659 Kimball Drive, Suite B-201
Gig Harbor, WA 98335
Phone: (253) 853-1806
E-Mail: jane@jkolerlaw.com

13. Disputes

13.1 Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be King County Superior Court, Kent, Washington.

14. Attorney Fees

14.1 In any suit or action instituted to enforce any right granted in this Agreement, the prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party.

15. General Administration and Management

15.1 The City Administrator, or his/her designee (the Contract Administrator) shall review and approve Consultant's invoices to the City under this Agreement. No third party shall have any direct control or influence over the services performed under this Agreement.

15.2 Equipment and Other Resources. The Consultant shall provide, at no cost to the City, its own cell phone, access to standard on-line computer legal research databases, long distance telephone, cell phone service, mileage, etc. The City shall provide office space to Consultant for its use while on City premises to include a computer, a telephone, a desk, and access to a copy and fax machine.

15.3 Consultant shall apply for and obtain a City of Black Diamond business license and shall renew said license at the required time, pursuant to City of Black Diamond Municipal Code. Consultant shall be required to maintain a City of Black Diamond business license for the entire duration of this Agreement. Consultant shall not charge the costs of the business license to the City.

16. Extent of Agreement/Modification

16.1 This Agreement, together with any attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all

prior negotiations, representations, or agreements, either written or oral. This Agreement may only be amended, modified, or added to by written instrument properly signed by both parties.

17. Conflict of Interest: Non-Collusion

17.1 No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. The Consultant shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The Consultant represents that Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the project to which this Agreement pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that in performance of this Agreement no person having any such interest shall be employed by Consultant. Consultant's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from any third party.

17.2 The Consultant warrants and represents that the Consultant has not, nor has any other member, employee, representative, agent or officer of the Consultant, entered into or offered to enter into any combination, collusion or agreement with any person or entity to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this Consultant Agreement other than the consideration offered pursuant to the terms and conditions hereof.

Accepted and agreed to:

CITY OF BLACK DIAMOND

LAND USE & PROPERTY LAW, PLLC

By: _____
Pat Pepper, City Council President

By: _____
Jane Koler

Date: _____

Date: _____

Attest:

Note: Pat Pepper has no authority to contract for legal services - CB

By: _____
Brenda L. Martinez
City Clerk

EXHIBIT A

Consultant's Scope of Work

I. Duties.

- A. Jane Koler of Land Use & Property Law, PLLC shall provide legal services to the City ("Attorney").
- B. Attorney Jane Koler shall be principally responsible for performing routine legal work for the City, except as set forth in subsection (C) below. The following list of routine duties is illustrative of the services to be performed by Attorney that do not require prior authorization from the Mayor, City Administrator, or City Council.
 - 1. Attorney shall provide services in the offices of Land Use & Property Law, PLLC, 6659 Kimball Drive, Suite B-201, Gig Harbor, Washington 98335. The City may schedule appointments with Attorney as needed, either in the Land Use & Property Law offices, or in City Hall in Black Diamond. Attorney will attend City Council meetings and any other meetings specified by the City in Black Diamond. The City may ask Attorney to attend meetings on issues relating to City business in other locations.
 - 2. Attorney shall draft City ordinances, agreements, resolutions, interlocal agreements, correspondence, and other legal documents as requested by the City;
 - 3. Attorney shall approve all ordinances and agreements as to proper form and content;
 - 4. Attorney shall advise the Mayor, Councilmembers, and staff members with regard to legal matters relating to their respective duties being performed for the City, or by telephone, in person and/or by written memo, on routine City business;
 - 5. Attorney shall attend all Regular City Council business meetings and shall attend other regularly-scheduled or Special Meetings of the City Council as requested by the City if Dan Glen is not attending such meeting.
- C. The following list of duties are those duties that will require prior authorization from the Mayor, City Administrator, or City Council prior to commencement of services by Attorney as follows:
 - 1. Attorney shall represent the City in lawsuits as specified, and other contested proceedings commenced by the City as specified;

2. Attorney shall be available on an as-needed basis as directed by the Mayor or City Administrator, to discuss legal matters with citizens that affect the City and/or to respond to citizen inquiries in person, in writing, or by telephone, involving City business;
 3. Attorney may be asked to attend board meetings, commission meetings, committee meetings, or any other type of meeting on an as-needed basis, including meetings with other governmental agencies as necessary, on matters involving the City; and
 4. Attorney may be asked to perform other duties as are deemed necessary and appropriate, and not defined as "routine" in Section B above, in order to provide the City with legal representation and advice;
- D. Attorney's duties shall not include the following:
1. Providing public defense services for indigent defendants;
 2. Providing criminal prosecution services;
 3. Providing legal services associated with union negotiations, personnel, or employment matters, including personnel disciplinary proceedings.
 4. Representing the City in any legal matter where Attorney is prohibited from doing so as a result of a conflict of interest under the Rules for Professional Conduct, or other applicable law or regulation;
 5. Providing legal services where the City has insurance coverage that provides for legal services to the City, the City has tendered the defense of the lawsuit to the insurance carrier, and the insurance carrier has assigned the lawsuit to an attorney other than the Attorney; provided however, that if the insurance carrier has assigned the lawsuit to an attorney other the Attorney, the Attorney may monitor the lawsuit, as requested by the City, on a case-by-case basis. The City acknowledges that the insurance carrier may retain the Attorney to provide legal services.