

RESOLUTION NO. 19-1289

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, KING COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH GUNDERSON LAW OFFICES, PLLC FOR PROSECUTING ATTORNEY SERVICES

**WHEREAS**, the City of Black Diamond finds it necessary to hire a prosecuting attorney to provide misdemeanor prosecutorial services, contested infraction hearing representation for the police and forfeiture services; and

**WHEREAS**, the City advertised for qualified firms and individuals to fill the position of prosecutor and a selection panel including the Mayor, Police Chief, and City Clerk/HR Manager reviewed the proposals and interviewed two applicants; and

**WHEREAS**, the Mayor recommends Gunderson Law Offices, PLLC as qualified and willing to provide the necessary services;

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

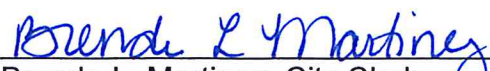
**Section 1.** The Mayor is hereby authorized to execute an agreement, substantially in the form attached hereto as Exhibit A, for the purposes of obtaining prosecutorial services.

**PASSED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 3RD DAY OF JANUARY 2019.**

CITY OF BLACK DIAMOND:

  
\_\_\_\_\_  
Carol Benson, Mayor

Attest:

  
\_\_\_\_\_  
Brenda L. Martinez, City Clerk

## **PROFESSIONAL SERVICES AGREEMENT FOR PROSECUTION SERVICES**

**WHEREAS**, the Prosecutor is licensed to practice law in the State of Washington; and

**WHEREAS**, the Prosecutor has the ability to provide high quality legal representation for the City in the City of Black Diamond Municipal Court in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases; and

**WHEREAS**, the Mayor has recommended, and the City Council finds that it is in the best interests of the public that the City retain the services of the Prosecutor:

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

**1. Parties**

This Agreement is entered into between the City of Black Diamond, King County, Washington (“City”), and Gunderson Law Office, PLLC (“Prosecutor”); collectively, the “Parties”.

**2. Effective date**

This Agreement is effective as of the 1<sup>st</sup> day of January, 2019.

**3. General Description of Services**

The Prosecutor has been retained by the City to provide professional legal services in Black Diamond Municipal Court and other courts as required.

**4. Scope of Work**

A. The Prosecutor agrees to provide all necessary prosecution services to the City of Black Diamond, including:

- 1) Providing advice to Black Diamond Police Officers on matters relating to criminal law and proper procedures for enforcing the law;
- 2) Reviewing police reports for determination of probable cause and charging;
- 3) Drafting and filing criminal complaints and probable cause statements as necessary;
- 4) Appearing at arraignments, pretrial hearings, and motions;
- 5) Initiating settlement discussions and plea negotiations;
- 6) Handling all phases of jury trials;
- 7) Drafting briefs and motions;
- 8) Appearing at sentencing and review hearings;

- 9) Tracking case dispositions, including reasons for declining to prosecute particular cases;
- 10) Appearing on infractions where the violator has retained legal counsel;
- 11) Responding to and appearing on behalf of the City in RALJ appeals;
- 12) Appearing at civil asset forfeiture hearings;
- 13) Handling code enforcement cases as requested by the City.

- B. The services performed by the Prosecutor shall not exceed the Scope of Work without prior written authorization from the City.
- C. The City may, from time to time, require changes or modifications in the Scope of Work. However, 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.

#### **5. Schedule of Work and Continuity of Representation**

- A. It is agreed by the Parties that continuity of representation is very important for effective prosecution. Therefore, the Prosecutor shall make good faith efforts to ensure that there is continuity of representation. The Prosecutor shall also make good faith efforts to ensure that there is continuity of representation in choice of substitute prosecutors.
- B. The Prosecutor shall appear for all regularly scheduled court hearings in the Black Diamond Municipal Court to perform the services described in the Scope of Work.
- C. As of the effective date of this Agreement, the Prosecutor shall be required to appear in Black Diamond Municipal Court for a minimum of two calendar days each month. Jury trials, motions, and other special hearing may require occasional additional appearances.
- D. The Prosecutor agrees and understands that, while the City will make good faith efforts to consult with the Prosecutor prior to changing the schedule of court hearings, and will take the Prosecutor's needs into accounts, the City will have final discretion to alter the scheduling of court hearing and it shall be the Prosecutor's responsibility to ensure such hearings are covered by the Prosecutor.
- E. In the event that prosecution of any person would constitute a conflict of interest for the Prosecutor, pursuant to the Washington State Bar Association Rules of Professional Conduct, the Prosecutor shall not prosecute such person and the City shall be responsible for the cost of outside legal representation for the City.



## 6. Compensation

- A. Base Rate. Beginning on January 1, 2019, the City shall pay the Prosecutor a base rate of \$3,400 per month for performing the Scope of Work as set forth in Section 4A, Scope of Work, numbers 1 through 13. This rate of compensation assumes an on-going level of Black Diamond Municipal Court hearings of two full days per month. The Prosecutor shall provide all services to effectively prosecute violations of Black Diamond Municipal Code and for representing the City on infraction cases where the violator has retained counsel. This amount shall include all in-court and out-of-court work (including, but not limited to, clerical staff, office rent, photocopies and letter; mailing costs; telephone expenses), training for new law enforcement, travel and attendance at necessary meetings. The Prosecutor, at their expense shall obtain and keep in force any, and all necessary licenses and permits.
- B. Police Training Rate. Work performed under the Scope of Work as set forth in Section 4A, number 1 – providing advice to Black Diamond Police Officers – not related to a specific case and when such advice consists of a formal in-service training session shall be compensated at the rate of \$250 for each half-day of such training.
- C. Additional Court Calendars Rate. In the event it is necessary for the Prosecutor to schedule an additional court calendar to accommodate a motion or trial that cannot be scheduled for a regularly scheduled court calendar or to otherwise complete a trial, the City agrees to additionally compensate the Prosecutor in the amount for each additional court calendar that is scheduled (\$400 per one-half day) up to a total of \$800 per month as full compensation for all additional court calendars.
- D. The rate of compensation may be adjusted by the mutual agreement of the Parties in writing.

## 7. Payment

- A. Base Rate. Payment of the base rate shall be made on the fifteenth (15<sup>th</sup>) day of every month for the preceding month of services. If the 15<sup>th</sup> falls on a weekend or holiday, payment shall be made on the first business day following the 15<sup>th</sup> day. Should this Agreement be terminated before the end of a full month, the base rate shall be prorated by subtracting payment for any scheduled court days where the Prosecutor failed to appear.
- B. Records Retention. The Prosecutor 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. Copies shall be made available on request.

- C. Dispute over Services. If the services rendered do not meet the requirements of the Agreement, the Prosecutor will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.
  
- D. Deductions. In the event the Prosecutor fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, arising out of services rendered hereunder, then the Prosecutor authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance, if any. Any such payments shall be deducted from the Prosecutor's total compensation.

**8. Contract Administration and Management.**

- A. The Mayor or his or her designee shall have primary responsibility for administering services to be performed by the Prosecutor and shall coordinate all communications between the Prosecutor and the City. The Mayor, or his/her designee, shall be responsible for evaluation of the Prosecutor's performance. Supervision and evaluation efforts may include in-court observations and periodic conference.
  
- B. The Prosecutor, at such times and in such form as the City may require, shall maintain a case reporting and management information system which includes number and type of cases, attorney hours and disposition of cases and shall furnish the City with periodic reports pertaining to the work and services undertaken pursuant to this Agreement. The Attorney will make available to the City all work-related accounts, records and documents for inspection, auditing, or evaluation during normal business hours in order to assess performance, compliance and/or quality assurance under this Agreement; provided that, any such system shall be maintained independently from client files so as to disclose no personal or privileged information.
  
- C. The Prosecutor shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Agreement or for any of the compensation due hereunder without the prior written consent of the City; provided that, any counsel associated with or employed by the Prosecutor shall have the authority to perform the services called for herein, and the Prosecutor may employ associated counsel to assist him/her at the Prosecutor's expense. The Prosecutor and any other attorney retained pursuant to this Agreement shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington and shall meet the standards set forth herein. The Prosecutor may also employ a legal intern admitted under Rule 9 of the Washington Admission to Practice Rules



to provide public defense services. Legal interns will have their work reviewed by a supervising attorney and will have all their written work reviewed and/or countersigned by a supervising attorney.

## 9. Notices

All notice required by the Agreement shall be considered properly delivered when personally delivered, when received by facsimile, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to:

### City:

City of Black Diamond  
PO Box 599  
Black Diamond, WA 98010  
Contact: Mayor, City of Black Diamond  
Phone: 360-886-5700  
Fax: 360-886-2592

### Prosecutor:

Gunderson Law Office PLLC  
1410 S. Meridian Suite B  
Payallup WA 98371  
Contact: Ivan Gunderson  
Tax I.D #: \_\_\_\_\_  
Phone: 253-347-8824  
Fax: 360-272-6681

It is the responsibility of the Prosecutor to notify the City in writing if the contact information appearing above should change.

## 10. Discrimination and Compliance with Laws

- A. The Prosecutor 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, 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.
- B. The Prosecutor shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C. Violation of Section 10 of the Agreement shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility of the Prosecutor to do further work for the City.

## 11. Termination of Agreement

- A. Termination Without Fault. Either party may terminate this Agreement upon a minimum of ninety (90) days advance notice to the other party. Such notice shall indicate the date of termination.

- B. Termination For Cause. The City may terminate the Prosecutor's contract for "cause" (as defined in this section) immediately upon written notice to the Prosecutor. Such notice shall specify in reasonable detail the nature of the cause. For purposes of this Agreement, "cause" shall include, with limitation: (1) material breach of this Agreement; (2) failure to satisfactorily perform the responsibilities and job duties; (3) unethical practices as set forth in the Rules of Professional Conduct; (4) loss of license to practice law in the state of Washington; or (5) fraudulent or dishonest conduct. The City shall have the sole discretion to determine whether there is "cause" to terminate the Prosecutor's services under this Agreement.

## **12. Standard of Care**

The Prosecutor represents and warrants that he or she, and any agents that will be used to perform services under this Agreement, have the requisite training, skill and experience necessary to provide the services described herein and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided under this Agreement shall 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. All obligations and services of the Prosecutor undertaken pursuant to this agreement shall be performed diligently and completely in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law, and applicable court rules defining the duties of counsel.

## **13. Indemnification/Hold Harmless**

The Prosecutor 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 Prosecutor in performance of this Agreement, provided however, that such provision shall not apply to the extent that damage or injury results from the fault of the City or its officers, other agents, or employees. "Fault" as used herein shall have the same meaning as set forth in RCW 4.22.015.

## **14. Insurance**

The Prosecutor shall procure and maintain, for the duration of the Agreement, professional liability insurance from a company licensed to do business in the State of Washington with limits no less than \$500,000 per claim and \$500,000 policy aggregate limit. This policy shall be written to insure the Prosecutor and its agents, representatives, and employees.

## **15. Assigning or Subcontracting**



This Agreement may not be assigned by either party without the express written consent of the other party, and said consent can be withheld in that Parties' sole discretion.

**16. Independent Contractor**

The Prosecutor is and shall be at all times during the term of this Agreement an independent contractor. The Prosecutor acknowledges that she is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, and the Prosecutor agrees to comply with all applicable laws regarding this reporting of income, maintenance of insurance and records, and all other requirements and obligations imposed as a result of the Prosecutor's status as an independent contractor. If the City is assessed liable or responsible in any manner for those charges or taxes, the Prosecutor agrees to hold the City harmless from those costs, including attorney's fees.

This Agreement shall be for the sole benefit of the Parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

**17. Governing Law and Venue for Disputes**

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 in King County, Washington.

**18. Attorneys' Fees**

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

**19. Extend of Agreement/Modification**

This Agreement represents the entire Agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified only express written consent of both Parties. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.

**20. Severability**

If any term or provision of this Agreement is held invalid, the remainder of such terms or provisions of this Agreement shall not be affected, if such remainder would then continue to conform to the terms and requirements of applicable law.

**21. Interpretation of Fair Construction of Contract**

This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this agreement shall be in all case construed



as a whole according to its fair meaning and not strictly construed for, nor against, either party.

**22. Waiver of Breach**

The failure of any party hereto to insist upon strict performance of any of the covenants and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of any such option or right or of any other covenants or agreement, but the same shall be and remain in full force and effect.

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREES TO BE BOUND BY THEM.

**CITY OF BLACK DIAMOND**

By: *Carol Benson*  
Print Name: *Carol Benson*  
Title: *Mayor*  
Date: *1/4/19*

**PROSECUTOR**

By: *Ivar Gunderson*  
Print Name: *Ivar Gunderson*  
Title: *owner - Gunderson Law Office*  
Date: *12/26/2018*