

RESOLUTION NO. 1300

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR PROSECUTORION SERVICES WITH GRAVIS LAW, PLLC

WHEREAS, the City of Dayton (the "City") is required by statute to provide for the prosecution of misdemeanor and gross misdemeanor offenses committed within its jurisdictional boundaries; and

WHEREAS, the City issued a request for proposals in November 2016 and received a response from two law firms proposing to provide municipal prosecution services on behalf of the City of Dayton; and

WHEREAS, City staff has reviewed the proposals and recommends entering into a one year contract for prosecution services with Gravis Law, PLLC, in the form attached hereto at Exhibit A; and

WHEREAS, the City Council of the City of Dayton finds that entering into a contract for municipal prosecution services with Gravis Law, PLLC, is in the best interest of the City of Dayton and will promote the general health, safety and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. That the Mayor is hereby authorized to execute on behalf of the City of Dayton an Agreement for Prosecutorial Services with Gravis Law, PLLC, in the form attached hereto as Exhibit "A."

Section 2. That the Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. That this resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this 23rd day of January, 2017.

CITY OF DAYTON



CRAIG GEORGE, MAYOR

ATTEST:



Trina Cole, City Clerk

APPROVED AS TO FORM:



Quinn N. Plant, City Attorney

AGREEMENT FOR PROSECUTORIAL SERVICES

THIS AGREEMENT is entered into by and between the CITY OF DAYTON, hereinafter referred to as "DAYTON," and Gravis Law, PLLC, hereinafter referred to as "Prosecutor," for the purpose of providing prosecutorial services for Dayton.

1. PROSECUTOR SHALL:

- A. Provide complete misdemeanor, and gross misdemeanor prosecution, for all cases filed in the Columbia County District Court and other related services including:
 - 1. Arraignment Docket representation
 - 2. Negotiation of sentences with defense counsel
 - 3. Bench Trials and hearings
 - 4. Pre-trial hearings
 - 5. Jury Trials and Trial Readiness Hearings
 - 6. Post-trial motions and hearings
 - 7. Appeals
 - 8. Response to criminal-related questions from the public that cannot be answered by administrative staff.

- B. Be prompt in attendance for all required dockets, hearings and trials on the first and third Tuesdays of each month, or such other days as directed by the Columbia County District Court. Trial dates and times shall be set with written notice from Columbia County District Court. The dates and times for trial may differ from the first and third Tuesday schedule above. Further, such schedule may be changed from time to time to meet the needs of the Court upon mutual agreement of the parties.

- C. Mathew R. Johnson, 509-382-2030 is the contact who shall be responsible for:
 - 1. Complaint review and response
 - 2. Review and evaluation of quality of service
 - 3. Periodic reports to Dayton administration upon request

- C. Personally provide the prosecution services and divide the representation to ensure full-time coverage as well as substitute and additionally required coverage to allow multiple actions to proceed when necessary. In the event Prosecutors wish to hire additional attorneys other than Matthew Johnson, Brett Spooner, Asa LaMusga, or Derek Johnson to perform services, Prosecutors shall obtain advance approval from Dayton. This provision shall not apply in the event of unforeseen circumstances where Prosecutors are temporarily unable to perform. Prosecutors shall be

responsible for assuring that qualified attorneys are present in Court at all times necessary.

In the event that Prosecutor has a professional conflict of interest with respect to a particular defendant that cannot be waived, resolved, or covered by another staff attorney of the Prosecutor, Prosecutor shall make reasonable efforts to coordinate substitute council to prosecute the action at the standard attorney rate applicable to substitute indigent defense counsel.¹ In such event, Dayton shall be responsible for the cost of substitute council and Prosecutor shall obtain Dayton's prior written authorization before engaging substitute council.

- D. Use established practices and policies to recommend utilization of alternatives to incarceration as appropriate. Such alternatives shall include but not be limited to electronic home monitoring, work crew, etc. Prosecutors shall obtain Dayton's approval prior to implementing any program for alternate dispositions involving charitable contributions.
- E. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court.

2. DAYTON SHALL:

- A. Provide all police reports to Prosecutor in a timely manner.
- B. Pay all subpoena and service costs and costs of required reports for prosecution.

3. TERM:

The term of this Agreement shall be for one year, beginning February 1, 2017, and ending January 31, 2018.

4. COMPENSATION:

For purposes of this section, "case" means (i) a matter filed by law enforcement with and assigned a case number by the Municipal Court for the City of Dayton, (ii) a matter filed by the Prosecutor in good faith with and assigned a case number by the Municipal Court for the City of Dayton, and (iii) a show cause proceeding in a case previously adjudicated by the City of Dayton.

As consideration for the services described herein, Dayton shall pay to Prosecutor the sum of Two Thousand Dollars (\$ 2,000) per month.

¹ This rate is \$ 75 per hour as of January 2017.

5. ETHIC COMPLIANCE, REPORTS AND TRAINING:

The Prosecutor will provide the aforementioned services in conformity with all applicable Rules of Professional Conduct and will provide the District Court and Dayton with any reports, fiscal or otherwise, which are reasonably required in the performance of the District Court's and Dayton's responsibilities. An annual report shall be provided by the Prosecutor to Dayton on or before August 1 of each year. The report must include a list of each case upon which work was performed, the number of hours expended on each case upon which work was performed, and the disposition of same.

6. TAXES AND ASSESSMENTS:

The Prosecutor shall be solely responsible for compensating its employees and contractors and for paying all related taxes, deductions and assessments, including but not limited to, leasehold excise taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event Dayton is assessed a tax or assessment as a result of this Agreement, the Prosecutor shall pay the same before it becomes due.

7. INDEPENDENT CONTRACTOR:

The parties agree that the Prosecutor is an independent contractor with the responsibility and authority to control and direct the performance of the details of the work described herein in accordance with the terms and conditions of this Agreement. The implementation of contracted activities and the results to be achieved are solely the responsibility of the Prosecutor. No agent, employee, subcontractor, or representative of the Prosecutor shall be deemed to be an employee, agent, servant, or representative of Dayton or of the Columbia County District Court for any purpose, and the employees, agents, subcontractors, or representatives of the Prosecutor are not entitled to any of the benefits Dayton provides for its employees. The Prosecutor will be solely and entirely responsible for his acts and for the acts of his agents, employees, subcontractors, or otherwise, during the performance of this Agreement.

8. INDEMNITY:

The Prosecutor hereby agrees to release, indemnify, protect, defend and save harmless Dayton and its elected and appointed officials, employees, volunteers, and agents from all claims, actions, or damages of any kind and description which may occur to or be suffered by any person or persons, corporation, or property arising, directly or indirectly, out of the operation of this Agreement, caused or contributed thereto by the Prosecutor or his employees or subcontractors. Provided, however, that nothing herein shall be deemed to

require the Prosecutor to indemnify Dayton or its elected or appointed officials, agents, volunteers, or employees for injury to persons, corporation, and/or property arising from the sole negligence of Dayton and its elected or appointed officials, employees, volunteers, and agents. In case of suit or action brought against Dayton and/or its elected or appointed officials, agents, volunteers, and employees for damages arising out of or by reason of any of the above-mentioned causes, the Prosecutor agrees to pay all costs of defense, including reasonable attorney's fees and any judgment.

9. INSURANCE AND INDEMNIFICATION:

Without limiting the Prosecutor's indemnification, it is agreed that the Prosecutor shall maintain in force, at all times during the term of this Agreement, a policy or policies of insurance covering its operation as described below.

A. General Liability Insurance

The Prosecutor shall maintain continuously public liability insurance with limits of liability not less than Two Hundred Fifty Thousand Dollars (\$250,000) for each occurrence, personal injury, and/or property damage liability.

The Prosecutor shall provide a certificate of insurance or, upon written request of Dayton of Dayton, a duplicate of the policy as evidence of insurance protection. The Prosecutors shall immediately notify Dayton of any communication with their insurance provider canceling or threatening to cancel insurance coverage under this provision.

B. Professional Liability Insurance

The Prosecutor shall maintain or ensure that its professional employees and/or contractors maintain professional liability insurance for any and all acts which constitute professional services in the performance of this Agreement. For purposes of this Agreement, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than One Million Dollars (\$1,000,000) combined single limit per claim/aggregate. The Prosecutor further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but not limited to the amount of the deductible under the insurance policy. The Prosecutor shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of Dayton. The Prosecutor shall not be required to make payments other than its judicially determined percentage, for

any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Prosecutor and Dayton.

Such insurance shall not be reduced or canceled without thirty (30) days' prior written notice to Dayton. If such insurance is obtained on a "claims made" basis, the Prosecutor will continue to carry coverage for not less than three (3) years after expiration of this Agreement, and will provide a certificate in form and content satisfactory to Dayton demonstrating such continuing coverage. The Prosecutor shall provide certificates of insurance or, upon written request of Dayton, duplicates of the policies as evidence of insurance protection.

C. Workers' Compensation

The Prosecutor shall maintain Workers' Compensation coverage as required by law. The Prosecutor shall provide a certificate of insurance or, upon written request of Dayton, a certified copy of the policy as evidence of insurance protection.

10. NON DISCRIMINATION:

The Prosecutor shall not discriminate on the basis of race, creed, color, national origin, or physical, mental, or sensory handicap in the performance of this Agreement.

11. TERMINATION:

Either party may terminate this Agreement, with or without cause, upon ninety (90) days written notice sent by certified mail to the Prosecutor at the address listed in this Agreement.

In the event the Prosecutor terminates the Agreement under this section, Prosecutor shall provide prosecution services in accordance with the terms set forth in this Agreement beyond the termination date and at the same compensation level until the later of the natural Agreement termination date or one year from Dayton's receipt of the Prosecutor's notice, and thereafter at \$ 175 per hour until Dayton obtains replacement prosecution services. Upon receiving Prosecutor's notice, Dayton shall make good faith efforts to secure replacement prosecution services. Dayton's failure to publish a new request for proposal within ninety days of receiving Prosecutor's notice will not satisfy Dayton's good faith obligation and if no request for proposal is published within ninety days of receiving Prosecutor's notice, Prosecutor's compensation will be adjusted to the hourly rate stated in the preceding sentence effective the 91st day following receipt of the Prosecutor's notice.

In the event Dayton terminates this Agreement under this section the parties

shall negotiate a reasonable fee for services to complete client representation which cannot be done through substituted counsel.

12. GOVERNING LAW:

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed to by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performances.

13. VENUE:

Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in the Superior Court for Columbia County, Dayton, Washington

14. INTEGRATION:

It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both parties.

15. WAIVER OF BREACH:

A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

CITY OF DAYTON



Craig George, Mayor

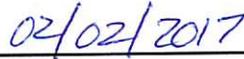
JANUARY 26, 2017

Date

Approved as to form:



Quinn Plant, Dayton City Attorney



Date

PROSECUTOR



Matthew R. Johnson, Attorney at Law
Gravis Law, PLLC



Date

