

**RESOLUTION NO. 2979**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR LEGAL SERVICES WITH GUNDERSON LAW OFFICE, PLLC.**

**WHEREAS**, the City of Bonney Lake needs to retain the services of a Contract Prosecutor to handle increased case load, provide coverage of conflict cases, and provide coverage so that staff can comply with COVID-19 quarantine and health precautions;

**WHEREAS**, the Gunderson Law Office, PLLC, has been providing Contract Prosecutor services to local municipalities, including Black Diamond and Sumner; and

**WHEREAS**, City Council finds it desirable to retain the services of Gunderson Law Office, PLLC.

**NOW THEREFORE**, the City Council of the City of Bonney Lake, Washington hereby authorizes the Mayor to sign an Agreement for Legal Services between the City of Bonney Lake and Gunderson Law Office, PLLC, attached hereto and incorporated herein by this reference.

**PASSED** by the City Council this 28th day of September, 2021.

DocuSigned by:  
*Neil Johnson, Jr.*  
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NEIL JOHNSON JR., Mayor

AUTHENTICATED:

DocuSigned by:  
*Harwood T. Edrvalson*  
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HARWOOD T. EDVALSON, City Clerk

City of Bonney Lake, Washington  
**City Council Agenda Bill (AB)**

<b>Department/Staff Contact:</b> Executive / Dena Burke Deputy City Attorney/Prosecutor	<b>Meeting/Workshop Date:</b> 28 September 2021	<b>Agenda Bill Number:</b> AB21-128
<b>Agenda Item Type:</b> Resolution	<b>Ordinance/Resolution Number:</b> 2979	<b>Sponsor:</b>

**Agenda Subject:** Contractual Prosecution Legal Service

**Full Title/Motion:** A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing The Mayor To Sign An Agreement For Contract Prosecution Legal Services, As Needed, With Gunderson Law Office, PLLC.

**Administrative Recommendation:** Approve

**Background Summary:** With the appointment of Dena Burke as Deputy City Attorney/Prosecutor, contractual prosecutorial legal services are needed on an on-call basis. Gunderson Law Office, PLLC have been chosen to provide these services. It is estimated that contractual prosecutorial legal services through the end of 2021 will be approximately \$15,000.  
**Attachments:** Resolution 2979 & Agreement for Legal Services

<b>BUDGET INFORMATION</b>				
Budget Amount	Current Balance	Required Expenditure	Budget Balance	Fund Source
\$29,000	\$4,118	\$15,000	-\$10,882	<input checked="" type="checkbox"/> General <input type="checkbox"/> Utilities <input type="checkbox"/> Other
<b>Budget Explanation:</b> 015.515.45.41.15 LEGAL SERVICES-PROSECUTOR-CONTRACTED				

<b>COMMITTEE, BOARD &amp; COMMISSION REVIEW</b>			
<b>Council Committee Review:</b>	Finance Committee	<i>Approvals:</i>	Yes No
	Date: 28 September 2021	Chair/Councilmember Justin Evans	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember Tom Watson	<input type="checkbox"/> <input type="checkbox"/>
		Councilmember Terry Carter	<input type="checkbox"/> <input type="checkbox"/>
	Forward to: September 28, 2021	<b>Consent Agenda:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Commission/Board Review:</b>			
<b>Hearing Examiner Review:</b>			

<b>COUNCIL ACTION</b>	
Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): September 28, 2021	Tabled to Date:

<b>APPROVALS</b>		
<b>Director:</b> <i>JPV</i>	<b>Mayor:</b> <i>NJJ</i>	<b>Date Reviewed by City Attorney:</b> (if applicable)

# LEGAL SERVICES CONTRACT

## between the City of Bonney Lake and Gunderson Law Office, PLLC

THIS CONTRACT is made between the City of Bonney Lake, a Washington municipal corporation (hereinafter the "City"), and Ivar J. Gunderson of Gunderson Law Firm, a Washington Professional Limited Liability Company, located and doing business at 1410 South Meridian, Suite B, Puyallup, WA 98371 (hereinafter "Ivar Gunderson") (collectively, the "Parties").

### I. DESCRIPTION OF WORK.

Ivar Gunderson shall perform the following services for the City in accordance with the following described plans and/or specifications:

Coverage prosecution services for the City of Bonney Lake at mutually agreeable times including but not limited to file and case preparation and management, court appearances at all phases of City matters, and trial representation.

Ivar Gunderson further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

**II. TIME OF COMPLETION.** The Parties agree that work will begin on the tasks described in Section I above on September 27, 2021. Additional times will be scheduled at mutually agreeable times.

### III. COMPENSATION.

- A. The City shall pay an hourly rate for Ivar Gunderson of \$75.00.
- B. Ivar Gunderson shall submit monthly payment invoices, as appropriate, to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within thirty (30) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify Ivar Gunderson and reserves the option to only pay that portion of the invoice not in dispute. In that event, the Parties will promptly make every effort to settle the disputed portion.

**IV. INDEPENDENT CONTRACTOR.** The Parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that Ivar Gunderson has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Contract.

**V. TERMINATION.** Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within Ivar Gunderson's possession pertaining to the services contemplated herein, which may be used by the City without restriction.

**VI. DISCRIMINATION.** In the hiring of employees for the performance of work under this Contract or any subcontract, Ivar Gunderson, or any person acting on behalf of Ivar Gunderson or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against

any person who is qualified and available to perform the work to which the employment relates.

**VII. INDEMNIFICATION.** Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Ivar Gunderson and the City, its officers, officials, employees, agents and volunteers, Ivar Gunderson's liability hereunder shall be only to the extent of Ivar Gunderson's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES IVAR GUNDERSON'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

The provisions of this section shall survive the expiration or termination of this Contract.

**VIII. INSURANCE.** Ivar Gunderson shall procure and maintain for the duration of this Contract, professional liability insurance against claims which may arise from or in connection with the performance of the work hereunder by Ivar Gunderson, his agents, representatives, or employees.

**No Limitation.** Ivar Gunderson's maintenance of insurance as required by this Contract shall not be construed to limit the liability of Ivar Gunderson to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**A. Minimum Scope of Insurance.** Ivar Gunderson shall obtain insurance of the types described below:

1. 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.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under Ivar Gunderson's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to Ivar Gunderson's profession.

**Minimum Amounts of Insurance:** Ivar Gunderson shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

**B. Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. Ivar Gunderson's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Ivar Gunderson's insurance and shall not contribute with it.
2. Ivar Gunderson's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**C. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

**D. Verification of Coverage** Ivar Gunderson shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Ivar Gunderson before commencement of the work.

**IX. EXCHANGE OF INFORMATION.** The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Ivar Gunderson for the purpose of completion of the work under this Contract.

**X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS.** Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to Ivar Gunderson will be safeguarded by Ivar Gunderson. Ivar Gunderson shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Ivar Gunderson for this project by anyone other than Ivar Gunderson on any other project shall be without liability or legal exposure to Ivar Gunderson.

**XI. CITY'S RIGHT OF INSPECTION.** Even though Ivar Gunderson is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

**XII. WORK PERFORMED AT Ivar Gunderson's RISK.** Ivar Gunderson shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Ivar Gunderson's own risk, and Ivar Gunderson shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

### **XIII. MISCELLANEOUS PROVISIONS.**

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Ivar Gunderson.

F. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of

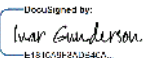
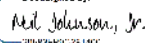
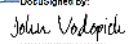
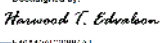
the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

G. Compliance with Laws. Ivar Gunderson agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Ivar Gunderson's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

H. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

I. Ratification. The parties agree to ratify and confirm any acts consistent with the authority and prior to the final approval of this contract

**IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.**

<p><b>Gunderson Law Firm:</b></p> <p>By:  _____ (signature)</p> <p>Print Name: <u>Ivar Gunderson</u> Its <u>Owner</u> Date: <u>10/1/2021   1:55 PM PDT</u></p>	<p><b>City of Bonney Lake</b></p> <p>By:  _____ (signature)</p> <p>Print Name: <u>Neil Johnson</u> Its <u>Mayor</u> Date: <u>9/29/2021   9:07 AM PDT</u></p> <p>By:  _____ (signature)</p> <p>Print Name: <u>John Vodopich</u> Its <u>City Administrator</u> Date: <u>9/30/2021   7:42 AM PDT</u></p> <p>Authenticated: By:  _____ (signature)</p> <p>Print Name: <u>Harwood T. Edvalson</u> Its <u>City Clerk</u> <u>9/29/2021   4:01 PM PDT</u></p>
<p><b>NOTICES TO BE SENT TO:</b> <b>Gunderson Law Firm</b> PO Box 160 Puyallup, WA 98371</p>	<p><b>NOTICES TO BE SENT TO:</b> <b>City of Bonney Lake</b> 9002 Main Street East Bonney Lake, WA 98391</p>