


REQUEST FOR COUNCIL ACTION

Date: November 19, 2012
Item No.: 12.f

Department Approval

City Manager Approval



Item Description: Approve 2013 – 2015 Erickson, Bell, Beckman & Quinn Contract for Prosecuting Legal Services

1 **BACKGROUND**

2 On June 11 the City Council authorized the City Manager to negotiate with Erickson, Bell,
3 Beckman, & Quinn (EBBQ) for civil and prosecution services for 2013 - 2015. The City
4 Manager concluded an agreement was unable to be reached for civil legal services; however, an
5 agreement was reached for prosecution services and terms of renewal can be found in
6 Attachment A.

7 **POLICY OBJECTIVE**

8 Achieve the best value for services contracted by the City.

9 **BUDGET IMPLICATIONS**

10 Attachment A includes monthly retainer and annual total.

11 **STAFF RECOMMENDATION**

12 Staff recommendation is to approve 2013 – 2015 contracts for prosecution services with
13 Erickson, Bell, Beckman, & Quinn.

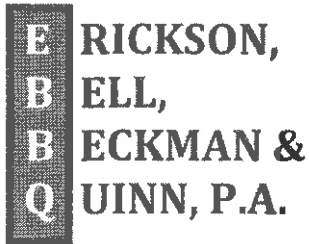
14 **REQUESTED COUNCIL ACTION**

15 Motion to Approve 2013 – 2015 contract for prosecution services with Erickson, Bell, Beckman,
16 & Quinn.

17

Prepared by: William J. Malinen, City Manager

Attachments: A: Letter Outlining Retainer Cost(s) Dated October 1, 2012
 B: EBBQ Contract for Prosecution Services



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James C. Erickson, Sr.
Caroline Bell Beckman
Charles R. Bartholdi
Kari L. Quinn
Mark F. Gaughan
James C. Erickson, Jr.

Robert C. Bell – *of counsel*

VIA U.S. MAIL AND ELECTRONIC MAIL ATTACHMENT

October 1, 2012

Mr. William J. Malinen
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

RE: 2013 – 2015 Prosecution Retainer
Our File No.: 1011-00004

Dear Mr. Malinen:

Our firm has provided criminal prosecution services to the City of Roseville since 1962. We are honored to fill this important public safety role with the City, and we believe we do so with unsurpassed quality and results. As you know, our current prosecution legal services contract expires on December 31, 2012. Our firm proposes the following terms for renewal of this contract:

	<u>Monthly Retainer</u>	<u>Annual Total</u>
2013	\$12,162.00	\$145,944.00
2014	\$12,405.00	\$148,860.00
2015	\$12,653.00	\$151,836.00

You will note that this compensation structure represents a 2% annual increase over our current retainer, which is generally in line with City-wide budgeting levels.

For non-retainer work (eg., vehicle forfeitures, appellate practice, etc.), we propose the following hourly rates:

	<u>Attorney Hourly Rate</u>	<u>Paralegal Hourly Rate</u>
2013	\$185.00	2013 \$95.00
2014	\$190.00	2014 \$100.00
2015	\$195.00	2015 \$105.00

Mr. William J. Malinen
October 1, 2012
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We propose that all other terms and conditions of the current contract remain unchanged for the duration of the 2013-2015 period. Please let me know if you would like to further discuss this proposal or if any clarification of terms is needed.

Very truly yours,

ERICKSON, BELL, BECKMAN & QUINN, P.A.

A handwritten signature in black ink, appearing to read "M. F. Gaughan", with a long horizontal flourish extending to the right.

Mark F. Gaughan

MFG/kmw

Pros

LAW OFFICES OF
JENSEN, BELL, CONVERSE & ERICKSON, P.A.

Roger A. Jensen
James C. Erickson, Sr. *†
Caroline Bell Beckman
Charles R. Bartholdi
Mitchell W. Converse
Kari L. Quinn*
Carol A. Baldwin
Mark F. Gaughan
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* Also Admitted in Wisconsin
† Of Counsel
‡ Certified Civil Trial Specialist

Robert C. Bell †
Willard L. Converse †

January 4, 2010

Bill Malinen
City Manager
Roseville City Hall
2660 Civic Center Drive
Roseville, MN 55113

RE: *Legal Services Contracts*

Dear Bill:

Enclosed are two signed copies of the Civil Contract and two signed copies of the Prosecution Contract for Legal Services.

You are requested to sign all copies where indicated and then return one signed copy of each contract to me.

Please call me if you have any questions or comments.

Sincerely yours,

JENSEN, BELL, CONVERSE & ERICKSON, P.A.

Charles R. Bartholdi

CRB/amv

Standard Agreement for Professional Services

This Agreement is made on the 31st day of December, 2009, between the City of Roseville, Minnesota, whose business address is 2660 Civic Center Drive, Roseville, MN 55113-1899 (hereinafter "City"), and Jensen, Bell, Converse & Erickson, P. A., a Minnesota professional corporation whose business address is 1500 Wells Fargo Place, 30 East Seventh Street, St. Paul, MN 55101 and Erickson, Bell, Beckman & Quinn, P. A., a Minnesota professional corporation whose business address is 1500 Wells Fargo Place, 30 East Seventh Street, St. Paul, MN 55101 (hereinafter "Consultant").

Preliminary Statement

The City has adopted a policy regarding the selection and hiring of consultants to provide a variety of professional services for City projects. That policy requires that persons, firms or corporations providing such services enter into written agreements with the City. The purpose of this Agreement is to set forth the terms and conditions for the provision of professional services by Consultant for prosecuting legal services hereinafter referred to as the "Work".

The City and Consultant agree as follows:

1. **Scope of Work/Proposal.** The Consultant agrees to provide the professional services shown in Exhibit "A" in connection with the Work. The terms of this standard agreement shall take precedence over any provisions of the Consultants proposal and/or general conditions.
2. **Term.** The term of this Agreement shall be from 1-1-2010 through 12-31-2012, the date of signature by the parties notwithstanding. This Agreement may be extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as herein stated.
3. **Compensation for Services.** City agrees to compensate the Consultant for the services as described in Exhibit A as follows:
 - a. Any changes in the scope of the work which may result in an increase to the compensation due the Consultant shall require prior written approval by an authorized representative of the City or by the City Council. The City will not pay additional compensation for services that do not have prior written authorization.
 - b. Special Consultants may be utilized by the Consultant when required by the complex or specialized nature of the Project and when authorized in writing by the City.
 - c. If Consultant is delayed in performance due to any cause beyond its reasonable control, including but not limited to strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of City, the time for performance shall be extended by a period of time lost by reason of the delay. Consultant will be entitled to payment for its reasonable additional charges, if any, due to the delay.

4. **City Information.** The City agrees to provide the Consultant with the complete information concerning the Scope of the Work and to perform the following services:
 - a. **Access to the Area.** Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, the City shall obtain access to and make all provisions for the Consultant to enter upon public and private lands or property as required for the Consultant to perform such services necessary to complete the Work.
 - b. **Consideration of the Consultant's Work.** The City shall give thorough consideration to all memorandums, opinions, reports, estimates, drawings, and other documents presented by the Consultant, and shall inform the Consultant of all decisions required of City within a reasonable time so as not to delay the Work of the Consultant.
 - c. **Standards.** The City shall furnish the Consultant with a copy of any standard or criteria that may be required in the performance of the Work.
 - d. **Owner's Representative.** The City Manager shall act as the City's representative with respect to the work to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement.
5. **Method of Payment.** The Consultant shall submit to the City, on a monthly basis, an itemized invoice for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to the City for:
 - a. **Progress Payment.** For work reimbursed on an hourly basis, the Consultant shall indicate for each employee, his or her name, job title, the number of hours worked, rate of pay for each employee, a computation of amounts due for each employee, and the total amount due for each project task. Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in Exhibit A, the Consultant shall provide an itemized listing and such documentation as reasonably required by the City. Each invoice shall contain the City's project number and a progress summary showing the original (or amended) amount of the contract, current billing, past payments and unexpended balance of the contract.
 - b. **Suspended Work.** If any work performed by the Consultant is suspended in whole or in part by the City, the Consultant shall be paid for any services performed prior to receipt of written notice from the City of such suspension, all as shown on Exhibit A.
 - c. **Payments for Special Consultants.** The Consultant shall be reimbursed for the work of special consultants, as described in Section 3B, and for other items when authorized in writing by the City.
 - d. **Claims.** To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid."
6. **Project Manager and Staffing.** The Consultant has designated Caroline Bell Beckman and Kari L. Quinn to perform the Work. They shall be assisted by other staff members as necessary to

facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace these designated staff from the Project without the approval of the City, unless Consultant replaces such person with another capable person.

7. **Performance Evaluation.** The parties agree that a performance evaluation shall be conducted annually.
8. **Standard of Care.** All Work performed pursuant to this Agreement shall be in accordance with the standard of care in Ramsey County, Minnesota for professional services of the like kind.
9. **Audit Disclosure.** Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential, shall not be made available to any individual or organization without the City's prior written approval, unless otherwise required under Minnesota law. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the City and either the Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this Contract. The Consultant shall at all times abide by Minn. Stat. 13.01 et seq., the Minnesota Government Data Practices Act, to the extent the Act is applicable to data and documents in the possession of the Consultant.
10. **Termination.** This Agreement may be terminated by either party by thirty (30) days written notice delivered to the other party at the address written above. Upon termination under this provision, if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the City terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payment shall be made to the Consultant, and the City may retain another consultant to undertake or complete the work identified in Paragraph 1.
11. **Subcontractor.** The consultant may enter into subcontracts for services provided under this Agreement. The Consultant shall promptly pay any subcontractor involved in the performance of this Agreement as required by the State Prompt Payment Act.
12. **Independent Consultant.** At all times and for all purposes herein, the Consultant is an independent contractor and not an employee of the City. No statement herein shall be construed so as to find the Consultant an employee of the City.
13. **Non-Discrimination.** During the performance of this Agreement, the Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
14. **Assignment.** The parties agree to the assignment of this Agreement by Jensen, Bell, Converse & Erickson, P. A. to Erickson, Bell, Beckman & Quinn, P. A. on February 1, 2010. From January 1, 2010 through January 31, 2010, Jensen, Bell, Converse & Erickson, P. A. shall be the Consultant

and have all of the rights, and be responsible for all of the obligations, of the Consultant under this Agreement. From February 1, 2010 through December 31, 2012, Erickson, Bell, Beckman & Quinn, P. A. shall be the Consultant and have all of the rights, and be responsible for all of the obligations, of the Consultant under this Agreement. Except for the foregoing assignment, neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.

15. **Services Not Provided For.** No claim for services furnished by the Consultant not specifically provided for herein shall be honored by the City.
16. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
17. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.
18. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant shall abide by statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided. The Consultant and City, together with their respective agents and employees, agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle the City to immediately terminate this Agreement.
19. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.
20. **Indemnification.** Consultant agrees to defend, indemnify and hold the City, its officers, and employees harmless from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorney's fees, resulting directly or indirectly from a negligent act or omission (including without limitation professional errors or omissions) of the Consultant, its agents, employees, or subcontractors in the performance of the services provided by this Agreement and against all losses by reason of the failure of said Consultant fully to perform, in any respect, all obligations under this Agreement.
21. **Insurance.** Consultant shall procure and maintain the following minimum insurance coverages and limits of liability during the pendency of this Agreement:
 - A. Worker's Compensation Statutory Limits
 - B. Professional Liability Insurance. The Consultant agrees to provide to the City a certificate evidencing that they have in effect, with an insurance company in good standing and authorized to do business in Minnesota, a professional liability insurance policy. Said policy shall insure payment of damage for legal liability arising out of the performance of professional services for the City, in the insured's capacity as the Consultant, if such legal liability is caused by an error, omission, or negligent act of the

insured or any person or organization for whom the insured is legally liable. Said policy shall provide an aggregate limit of at least \$2,000,000. Said policy shall not name the City as an insured. **A copy of the Consultant's insurance declaration page, Rider and/or Endorsement, as applicable, which evidences the compliance with this Paragraph 20, must be filed with City prior to the start of Consultant's Work.** Such documents evidencing Insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, City's right to enforce the terms of Consultant's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph.

- C. **Effect of Consultant's Failure to Provide Insurance.** If Consultant fails to provide the specified insurance, then Consultant will defend, indemnify and hold harmless the City, the City's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity in this subparagraph 20 C, the City may require Consultant to:

- a. Furnish and pay for a surety bond, satisfactory to the City, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company

Consultant will take the action required by the City within fifteen (15) days of receiving notice from the City.

22. **Ownership of Documents.** All plans, diagrams, analyses, reports and information generated in connection with the performance of the Agreement except for personal notes and writings of Consultant's attorneys, staff, agents and subcontractors ("Information") shall become the property of the City, but Consultant may retain copies of such documents as records of the services provided. The City may use the Information for its purposes and the Consultant also may use the Information for its purposes. Use of the Information for the purposes of the project contemplated by this Agreement ("Project") does not relieve any liability on the part of the Consultant, but any use of the Information by the City or the Consultant beyond the scope of the Project is without liability to the other, and the party using the Information agrees to defend and indemnify the other from any claims or liability resulting therefrom.

23. **Dispute Resolution/Mediation.** Each dispute, claim or controversy arising from or related to this Service Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition

precedent to initiating arbitration or legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No arbitration or legal or equitable action may be instituted for a period of 90 days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties. Mediation shall be held in the City of Roseville unless another location is mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a Mediated Settlement Agreement, which Agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

- 24. **Governing Law.** This Agreement shall be controlled by the laws of the State of Minnesota.
- 25. **Conflicts.** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this Contract. The violation of this provision renders the Contract void. Any federal regulations and applicable state statutes shall not be violated.
- 26. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

Executed as of the day and year first written above.

CITY OF ROSEVILLE



City Manager

JENSEN, BELL, CONVERSE & ERICKSON, P. A.

By:  _____

Its:  _____

ERICKSON, BELL, BECKMAN & QUINN, P. A.

By:  _____

Its:  _____

Exhibit A

Prosecuting Attorney

Scope of Services and Compensation

Scope of Services

1. Represent and prosecute all criminal law matters within the City's jurisdiction, included but not limited to scheduling, coordinating officer appearances, reviewing all criminal cases presented for purposes of prosecution, determine technical compliance with criminal code and other state statutes, writing complaints, making recommendations to the Court for alternatives to prosecution where appropriate.
2. Act as a resource to the Police Department in the development of criminal cases and provide training sessions for Police staff as needed.
3. Timely preparation and pursuit of disposition of criminal cases in advance of actual Court cases to avoid unnecessary officer court time.
4. Process and present forfeiture cases on behalf of Police Department.
5. Draft and review ordinances, resolutions, and correspondence, as requested.
6. Advise Mayor, Council Members, City Manager, Department Heads and other staff on City legal matters.
7. Represent City in matters related to the enforcement of City building and zoning codes.
8. Provide legal briefings as requested to City Council and Staff regarding new or proposed legislation or new court cases affecting municipal operations and activities.
9. Upon request, provide written update on new State or Federal legislation or judicial decisions impacting the City and suggested action or changes in operations or procedures to assure compliance.
10. Prosecute petty misdemeanors, misdemeanors, and gross misdemeanors. Prepare and appear at arraignments, pretrial hearings, probation revocation hearings, omnibus hearings, Rasmussen hearings, Florence hearings, court trials, jury trials, bail motions, in-custody arraignments, expungement hearings, motion hearings and sentencings. This includes all appearances at the Maplewood Branch of Ramsey County District Court, the Law Enforcement Center (LEC), and the Ramsey County Courthouse in St. Paul.
11. Prepare files for court, including assembling witness lists, preparing subpoenas, copying statutes or ordinances for trials, etc. Request certified documents such as driver's records, motor vehicle records, prior convictions, orders for protection, bank records, police reports, transcripts from prior hearings, plea petitions from prior hearings, ordinances and other information required for court.

12. Comply with discovery requests from defendants, including gathering records with regard to intoxilyzers, police training, criminal records of witnesses, taped Miranda warnings, copy of 911 calls, copy of any video taped evidence, etc.
13. Prepare letters and notices associated with various court trials and hearings. These include letters to victims, notice of hearings and changes of dates of hearings. Notification of officers of upcoming trials.
14. Maintain correspondence and telephone conferences with various agencies including law enforcement agencies, courts, Minnesota correctional facilities, victims/witnesses, defendants/defense attorneys, social workers, child protection, psychiatrists, victim advocates representatives, hospitals, banks, insurance companies, probation officers, BCA, etc.
15. Prepare and respond to motions of defense counsel including, but not limited to, motions to dismiss, motions to vacate plea, motions in limine, and Doggett motions.
16. Meet with victims of domestic abuse and discuss cases with them. Work with Tubman Family Alliance office and advocates.
17. Training and legal update of officers. Provide written materials including preparing and providing booklets and other handouts.
18. Preparation of reports of prosecution activities and staff.
19. Twenty-four hour availability, including weekends, for probable cause to detain determination and all other questions or assistance.

Compensation for the foregoing work shall be as follows:

Retainer:	Per Month
Months 1-12	\$ 11,240.00
Months 13-24	\$ 11,577.00
Months 25-36	\$ 11,924.00

Non-Retainer	Per Hour
Months 1-12	\$ 175.00
Months 13-24	\$ 180.00
Months 25-36	\$ 185.00

Paralegal/Law Clerk	Per Hour
Months 1-12	\$ 90.00
Months 13-24	\$ 93.00
Months 25-36	\$ 95.00

Other Fees Charged:

Attorney Fees for Vehicle Forfeiture and Appellate Work shall be billed in addition to the Compensation set forth above at the Non-Retainer Per Hour rates set forth above.

In addition to the foregoing, the City shall pay to the Consultant the Consultant's out-of-pocket expenses, such as messenger fees, copies and Westlaw costs.

The parties agree to review the compensation increases for Months 13-24 on or before July 1, 2010 and for Months 25-36 on or before July 1, 2011. In the event that the parties determine that such increases are not justified due to the then existing economic conditions and inflationary factors the parties shall reduce such increases downward by an amount mutually agreeable to the parties.