

Interlocal Agreement for Prosecution Services

This Agreement is entered into by and between the City of Kelso (“Kelso”), Washington, a municipal corporation, and the City of Woodland, a municipal corporation, City of Kalama, a municipal corporation, and City of Castle Rock, a municipal corporation.

Whereas, the Parties to this Agreement contract with Cowlitz County District Court for the provision of municipal court services and previously contracted with the same outside counsel for the provision of prosecution services within their respective jurisdictions; and

Whereas, changes to the Cowlitz County District Court have increased the manpower and cost required to provide prosecution services; and

Whereas, it is more efficient and economical to cooperate in providing prosecution services instead of each jurisdiction separately providing such services.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement and the exercise of the authority under the Interlocal Cooperation Act, RCW 39.34, the Parties do hereby agree as follows:

1. Purpose.

The purpose of this agreement is to provide effective and efficient municipal prosecution services within the jurisdictions of the Cities who are parties to this Agreement by consolidating the prosecution services within one city.

2. Services.

Kelso agrees to furnish all personnel, materials, and services and to do all things necessary and incidental to the performance of the prosecution services as more particularly set forth in Exhibit “A” attached hereto and incorporated herein by reference, (“Prosecution Services”).

Kelso agrees to provide a City Prosecuting Attorney (“PA”), licensed by the State of Washington and in good standing with the Washington State Bar Association, and such other staff or contracted professionals as is necessary to perform Prosecution Services for the City of Woodland, the City of Kalama, and City of Castle Rock (hereinafter “Contracting Cities).

In the provision of services under this Agreement the PA will endeavor to perform the Prosecution Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

3. Term.

The Term of this Agreement shall commence on September 1, 2019 and shall remain in effect until December 31, 2020 unless sooner terminated according to the provisions herein. The Agreement may be extended for additional periods of time upon mutual written agreement of the Parties.

4. Compensation.

A. In consideration of Kelso performing the prosecution services the Contracting Cities agree to pay their proportional share of all costs associated with the salary and benefits of the PA, paralegal, and any temporary staff. For 2019 and 2020, the proportional share is as follows:

The City of Woodland shall pay Kelso a sum of \$31,944 per year in monthly payments of \$2,662 payable on or about the first day of each month.

The City of Castle Rock shall pay Kelso a sum of \$20,328 per year in monthly payments of \$1,694 payable on or about the first day of each month.

The City of Kalama shall pay Kelso a sum of 18,876 per year in monthly payments of \$1,573 payable on or about the first day of each month.

B. Salary Schedule increases. The amounts set forth in Paragraph 4.A represent each Parties proportional share of the total cost of any salary and benefits associated with the provision of services—excluding appeals. The Contracting Parties agree that Kelso may increase the monthly payments in Paragraph 4.A to account for the direct costs to Kelso of any annual salary schedule increases, benefit increases, or minimum wage increases to pay for increases to the salary and benefits. Kelso shall provide sixty (60) days' notice of any cost of living salary adjustment or any employee classification change or changes to tax, pension, state or federally-mandated insurance, or health insurance premium rates , or the City employee's election of certain health benefit options that result in additional costs that exceed the amount specified in Paragraph 4.A.

C. For any trial, or any appeal, the Contracting Cities agree to pay an additional \$500.00 for the case upon receipt of invoice. For any appeal to the Washington State Court of Appeals or Washington State Supreme Court, Kelso may contract with outside counsel for such appeals and the Contracting Cities agree to pay such additional costs for outside counsel for the case upon receipt of invoice. Kelso will advise the Contracting Cities of the need for such outside counsel services and will work with the Contracting Cities to minimize any appellate costs.

D. In addition, the Contracting Cities agree to pay a one-time \$250 fee for Kelso to acquire the necessary software to perform the services. The City will own any software and be responsible for updates and maintenance.

5. Indemnification.

Each party shall defend, protect and hold harmless the other party from and against all claims, suits and/or other actions arising from any negligent or intentional act or omission of that party's employees, agents and/or authorized subcontractor(s) while performing this contract. No liability shall attach to either party by reason of entering into this agreement, except as expressly provided herein. Each party to this agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this agreement.

Kelso does not assume any liability for or in any way release the Contracting Cities from any liability or responsibility to the extent that it arises from the existence of effect of the Contracting Cities ordinances, policies, rules, or regulations. To the extent that any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability or validity of such ordinance policy rule or regulation is at issue, the Contracting City shall defend the same at its sole expense and if judgement is entered, shall fully satisfy the same, including all chargeable costs and reasonable attorney's fees.

With respect to the performance of this agreement and as to claims arising hereunder, each party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the statutory right of each party to contribution as provided in RCW 4.22.040 shall extend to any claim brought by or on behalf of any employee of the other party. This waiver is mutually negotiated by the parties to this agreement, and is made specifically for application in connection with an action brought by one of the parties to enforce its right to contribution, notwithstanding the provisions of RCW 4.22.070 as applicable in a claimant's original action.

6. Administration.

This Agreement will be administered by the City of Kelso.

7. Independent Contractor.

The parties intend that an independent contractor relationship will be created by this Agreement. The Contracting Cities will not exercise control and direction over the work of the PA. However, the results of the work contemplated by this agreement must meet the approval of the Contracting Cities and shall be subject to the Contracting Cities general rights of inspection and review to secure the satisfactory completion of the services.

The implementation of services under this Agreement will be within the discretion of the PA. The PA may be an employee of the City of Kelso or an outside contractor. Employees of Kelso are and will remain employees of Kelso and Employees of the Contracting Cities are and will remain employees of the Contracting Cities. Kelso will be solely and entirely responsible for the acts of the PA and any acts of its employees or agents performing work under this Agreement.

8. Insurance.

The City of Kelso is a member of the Washington Cities Insurance Authority Risk Pool and the liability coverage through the risk pool is acceptable to the Contracting Cities.

9. Termination.

This agreement may be terminated by the City of Kelso or by any two or more of the Contracting Parties by giving ninety (90) days written notice to the other parties. Any of the Contracting Parties may withdraw from the Agreement by giving ninety (90) days written notice to the other parties. In the event of the notice of withdrawal of any of the Contracting Parties, Kelso may reopen negotiations concerning paragraph 4, Compensation and the parties agree to negotiate in good faith concerning any changes to compensation.

10. Miscellaneous Provisions.

- a. Amendment. No provisions of this Agreement may be amended or modified except by written agreement signed by the Parties.
- b. Assignment. No party shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other parties.
- c. Third Party Benefit. This agreement is intended for the benefit of the parties and is not intended to create third party beneficiaries.
- d. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.
- e. Property and Equipment. No real property ownership is contemplated by this agreement. Any personal property or equipment necessary for the performance of services under this agreement shall be the responsibility of the City of Kelso and owned by the Kelso.
- f. Severability. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
- g. Attorney Fees. In the event either party brings a lawsuit to enforce the terms of this Agreement, or arising from a breach of this Agreement, the prevailing party shall be entitled to its costs and attorneys' fees for bringing or defending against the action.
- h. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.
- i. Counterparts. This Agreement may be executed in any number of counter-parts, which counterparts shall collectively constitute the entire Agreement.
- j. Filing. The City of Kelso will file this Agreement with the Cowlitz County Auditor's office and post on its website

IN WITNESS WHEREOF, the Parties below execute this Interlocal Agreement which shall become effective on the last date entered below:

City of Kelso	City of Woodland
By: _____	By: _____
Brian Butterfield, Interim City Manager Address:	Name, Title Address:
Date:	Date:
Approved as to form:	Approved as to form:
By: _____ Janean Parker, City Attorney	By: _____ Name, Title
City of Kalama	City of Castle Rock
By: _____	By: _____
Name, Title Address:	Name, Title Address:
Date:	Date:
Approved as to form:	Approved as to form:
By: _____ Name/Title	By: _____ Name/Title:

Exhibit A

Scope of Prosecution Services

- A. The City of Kelso will be responsible to assign a person to be the Prosecuting Attorney (“PA”) who is qualified and able to provide the services needed to represent the Contracting Cities as the primary prosecutor in matters before the Cowlitz County District Court. This includes representation for all stages of criminal proceedings for criminal misdemeanors and gross misdemeanors, criminal traffic misdemeanors and gross misdemeanors, and contested traffic infractions. The PA will be present at all stages of criminal proceedings including in-custody bail hearings, arraignments, pretrial conferences, motion hearings, bench trials, jury confirmation hearings, jury trials, and post conviction posttrial motions and appeals. The PA will also represent the Contracting Cities at contested traffic hearings when the defendant is represented by counsel, or when witnesses have been called to testify.
- B. The PA will be responsible for providing all of the legal support work necessary to support the prosecution of the Contracting Cities cases.
- C. The PA will represent the Contracting Cities in matters on appeal before the Cowlitz County Superior Court, Washington State Court of Appeals, and the Washington State Supreme Court. These are very infrequent but would include the writing of a brief in response to the appellant’s brief and appearance at all appellate proceedings. The PA will timely inform the Contracting City’s City Attorney of all matters set for trial and all appeals.
- D. The PA will be responsible for the following:
 - a. Review the police reports referred for charging sufficiency.
 - b. Respond timely with the necessary communication back to the police department.
 - c. Meet with the police department on a regular basis, communicate regularly and timely with the police department in order to assist with case investigation, to prepare officers as witnesses for evidentiary motions and for trial, and to provide feedback to officers and their superiors on matters relating to charges filed
 - d. Regularly communicate with and provide feedback to the Police Chief or Police Commander on criminal matters relating to police investigation and charging decisions
- E. The PA agrees to be available by telephone for communication with witnesses police and Contracting City staff and provide timely responses to messages during times of unavailability. The PA will provide a telephone number to the Contracting Cities for regular business contacts as well as a telephone number whether the same or different number for purposes of police investigation advice during non-business hours between 5:00 pm and 8:00 am. This number is expected to be used infrequently and only for emergent legal issues.
- F. Kelso shall have the right to determine which employees, staff, or outside contractors will provide prosecution services under this Agreement. If the PA is on vacation or has a conflict of interest on a case Kelso will arrange for alternative service.
- G. The PA agrees to timely inform the Contracting Cities City Attorney of issues that will cause liability for the Contracting City or have the potential to expose the City to liability.