



CITY of NOVI CITY COUNCIL

Agenda Item E
March 28, 2016

SUBJECT: Approval of the following recommendations pertaining to the City's Prosecutorial Legal Services:

- A. Approval of termination, effective immediately, of the 12/17/12 Agreement for Prosecutorial Legal Services between the City of Novi and Seglund Gabe Pawlak Groth and Kelley, and authorization for the City Clerk to issue to Seglund Gabe Pawlak Groth and Kelley a Notice of Termination of said contract;
- B. Approve resolution to authorize the City Manager to provide the law firm of Seglund Gabe Pawlak Groth and Kelley with a written authorization and direction to deliver all files and data regarding legal matters involving the City of Novi to the law firm of Baker & Elowsky, PLLC in order that further Prosecutorial Legal Services for the City of Novi be provided by the law firm Baker & Elowsky, PLLC; and
- C. Approve resolution to authorize the Mayor and City Clerk to execute an Agreement for Prosecutorial Legal Services with Baker & Elowsky, PLLC under the same terms and conditions as the prior Agreement with Seglund Gabe Pawlak Groth and Kelley.

SUBMITTING DEPARTMENT: City Manager's

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

City Council approved and entered into an agreement with Gabe, Quinn & Seymour, PC, for prosecutor services on December 17, 2012. The City has had a long standing relationship with Mr. Quinn's firm; unfortunately, Mr. Quinn has retired from daily practice of law. The newest incarnation of Mr. Quinn's former firm, Seglund Gabe Pawlak Groth and Kelley, does not include Mr. Scott Baker, the attorney who currently provides the majority of services to the City in connection with the district court prosecutions, having done so now for a few years. He and another former attorney from Gabe, Quinn & Seymour, PC have started their own firm, Baker & Elowsky, PLLC. Mr. Baker and his new partner Ms. Elowsky have requested the City consider transferring the prosecutorial services contract to his new firm from his previous firm. The request went before the Consultant Review Committee (CRC) on March 14, 2016 and received a positive recommendation. In doing so the CRC recommends that the City enter into a new contact with Baker Elowsky until the end of the year which at that time the City will advertise a request for proposal for its prosecutor services.

Additionally, City Council is being requested to approve a resolution and approve the release of all files and documents relating to work done for the City of Novi as authorized to do so under Michigan Rules of Professional conduct, including specifically Rule 1.16 (a) (3) and (d).

RECOMMENDED ACTION: Approval of the following recommendations pertaining to the City's Prosecutorial Legal Services:

- A. Approval of termination, effective immediately, of the 12/17/12 Agreement for Prosecutorial Legal Services between the City of Novi and Seglund Gabe Pawlak Groth

and Kelley, and authorization for the City Clerk to issue to Seglund Gabe Pawlak Groth and Kelley a Notice of Termination of said contract;

- B. Approve resolution to authorize the City Manager to provide the law firm of to Seglund Gabe Pawlak Groth and Kelley with a written authorization and direction to deliver all files and data regarding legal matters involving the City of Novi to the law firm of Baker & Elowsky, PLLC in order that further Prosecutorial Legal Services for the City of Novi be provided by the law firm Baker & Elowsky, PLLC; and
- C. Approve resolution to authorize the Mayor and City Clerk to execute an Agreement for Prosecutorial Legal Services with Baker & Elowsky, PLLC under the same terms and conditions as the prior Agreement with Seglund Gabe Pawlak Groth and Kelley

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

CITY OF NOVI

COUNTY OF OAKLAND, STATE OF MICHIGAN

RESOLUTION AUTHORIZING RELEASE OF FILES

Minutes of a meeting of the City Council of the City of Novi, County of Oakland, State of Michigan, held at the City Hall in said City on March 28, 2016 at 7:00 o'clock p.m. Prevailing Eastern Time.

PRESENT:

Councilmembers _____

ABSENT:

Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

WHEREAS, the City Council has determined to terminate the Prosecutorial Legal Services of Seglund Gabe Pawlak Groth and Kelley; and

NOW, THEREFORE, BE IT RESOLVED that the City Council authorizes Seglund Gabe Pawlak Groth and Kelley to release any and all prosecutorial files to Scott R. Baker, Esq. at a location of his designation, and to turn over and deliver said files including everything contained therein, but not limited to any files set forth on any list attached to the signed authorization, any electronic files or messages of any kind involving the City of Novi prosecutions, any closed files relating to the City of Novi prosecutions and any prosecutorial files under any file number assigned to the City of Novi. The City Manager is hereby authorized to sign for the release of all files.

AYES:

NAYES:

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, State of Michigan at a regular meeting held this 28th day of March, 2016, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

MARYANNE CORNELIUS, CITY CLERK

(LETTERHEAD)

AUTHORIZATION TO RELEASE FILES

TO: SEGLUND GABE PAWLAK GROTH AND KELLEY

The Undersigned hereby authorizes and directs you to immediately release, turn over, and deliver to Scott R. Baker, Esq. and his representatives or designees, at a location of his designation, all of the prosecutorial files, including everything contained therein, if the Undersigned, including, but not limited to, any files set forth on any list attached hereto, any electronic files or messages of any kind involving the Undersigned, any closed files relating to the Undersigned, and any files under any file number assigned to the Undersigned.

You are directed to execute a consent to substitution of attorneys on each of said files where appropriate. Upon the turnover of the files as aforesaid, you will have no further responsibility in connection with any of said files.

If you fail to immediately release the files as directed herein, the Undersigned shall consider same to be a breach of the Michigan Rules of Professional Conduct, including specifically Rule 1.16(a)(3) and (d).

Pete Auger
City Manager

Dated: March 29, 2016

AGREEMENT FOR PROSECUTORIAL LEGAL SERVICES

This Agreement is entered into this 28th day of March, 2016 by and between the CITY OF NOVI, a Michigan Municipal Corporation with offices at 47175 W. Ten Mile Road, Novi, Michigan 48375 (the "City") and BAKER & ELOWSKY, P.L.L.C., a professional limited liability company with offices at 48150 W. 11 Mile Road, Novi, Michigan 48375 ("Baker & Elowsky").

PREMISES

Baker & Elowsky have requested that the City retain Baker & Elowsky to act as special counsel to the City for the prosecution of ordinance violations.

The City wishes to retain Baker & Elowsky to act as special counsel to the City for the prosecution of ordinance violations.

The City and Baker & Elowsky would like to reduce their understanding as to the terms and conditions of this representation to writing.

Therefore, in mutual consideration of the promises contained herein, the parties agree as follows:

1. The City Council of the City of Novi hereby retains Baker & Elowsky as special counsel to the City for the prosecution of ordinance violations.
2. In this capacity, Baker & Elowsky shall perform the services set forth in Exhibit A, Scope of Services.
3. In consideration for performing the services described in Paragraph 2, Baker & Elowsky shall be paid at the rate of one hundred ten dollars (\$110.00) per hour.
4. Scott R. Baker shall be primarily responsible for the provision of the services listed, and he shall attest to the accuracy of all invoices submitted to the City by Baker & Elowsky pursuant to this Agreement. Baker & Elowsky agrees that a sufficient number of attorneys shall be assigned to the City's work to assure the timely delivery of services.

5. While this Agreement is in effect, Baker & Elowsky shall at all times maintain in full force and effect insurance of the type and in the amounts set forth in Exhibit B, Insurance Requirements.
6. This Agreement shall continue and remain in effect until December 31, 2016. Either party may terminate this Agreement at any time upon sixty (60) days written notice to the other for any reason, including convenience. In the event of termination, the parties agree to cooperate in the transition to successor legal counsel in conformance with the State Bar of Michigan ethical guidelines in order to protect the interests of the City and the general public.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first stated above.

WITNESSES

CITY OF NOVI

Robert Gatt, Mayor

Maryanne Cornelius, City Clerk

BAKER & ELOWSKY, P.L.L.C.

By:
Its:

EXHIBIT A – SCOPE OF SERVICES

- Prosecution of misdemeanor offenses as described in the City Code and ordinances.
- Prepare and present criminal cases for bench and/or jury trial.
- Attendance at the 52/1 District Court on the determined City of Novi court day.
- Attendance at all pre-formal hearing conferences and formal hearings involving Novi Police Department cases.
- Attendance at all pre-trial conferences involving Novi Police Department cases.
- Set a day and time for office hours at the Novi Police Department Prosecutor's Office (a minimum of three hours per week, or as needed) for review of cases filed by Novi Police Department personnel and consultation with Novi Police Department personnel.
- Communicate charging decisions to victims and Police Department personnel.
- Lead misdemeanor criminal cases through the court process.
- Coordinate the issuance of subpoenas for victims, witnesses and Police Department personnel with Novi Police Department Court Services.
- Coordinate the discovery process involving Novi Police Department reports, statements, evidence, etc. with attorneys representing defendants in criminal cases.
- Work with the Public Safety Director and/or his/her designee to improve the effectiveness and efficiency of cases presented for prosecution by the Novi Police Department.
- Provide legal research as it relates to the City Code and ordinances.
- Inform Novi Police Department personnel of statutory changes that could impact the City Code and ordinances.

EXHIBIT B – INSURANCE REQUIREMENTS

1. While this Agreement is in effect, Baker & Elowsky shall at all times maintain at its sole expense the following insurance:
 - a. Worker's Compensation Insurance with the Michigan statutory limits and Employer's Liability Insurance with minimum limits of \$100,000 each accident.
 - b. Commercial General Liability Insurance, Personal Injury, Bodily Injury and Property Damage on an "Occurrence Basis" with limits of liability of not less than \$3,000,000 per occurrence combined single limit.
 - c. Automobile Liability Insurance covering all owned, hired and non-owned vehicles with Personal Protection insurance to comply with the provisions of the Michigan No Fault Insurance Law, including Residual Liability Insurance with minimum bodily injury limits of \$3,000,000 each person and \$3,000,000 each occurrence and/or aggregate minimum property damage limits of \$3,000,000 each occurrence and/or aggregate.
 - d. Professional Liability coverage in the amount of not less than \$3,000,000 per occurrence and/or aggregate.
2. Baker & Elowsky shall be responsible for payment of all deductibles contained in any insurance required hereunder.
3. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the City render existing insurance limits inadequate, Baker & Elowsky shall furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be obtained at Baker & Elowsky's expense, under valid and enforceable policies, issued by the insurers of recognized responsibility that are well-rated by a national rating association and acceptable to the City.
4. All policies shall name Baker & Elowsky as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be cancelled or reduced without at least thirty (30) days prior notice to the City. All policies other than Worker's Compensation and Professional Liability shall name the City of Novi, its officers, agents and employees as additional insured. Certificates of coverage shall be presented to the City's Purchasing Manager prior to commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration of existing policies.
5. If any work is sublet in connection with this Agreement, Baker & Elowsky shall require each attorney to acquire and maintain at least the same types and limits of insurance as fixed for Baker & Elowsky.
6. The provisions requiring Baker & Elowsky to carry said insurance shall not be construed in any manner as waiving or restricting the liability of Baker & Elowsky under this Agreement.

7. The City has the authority to vary from the specified limits as deemed necessary.