

**SUBJECT: LEGAL SERVICES CONTRACT**

REQUESTED BY: Kristie VanGorder, City Clerk

PREPARED BY: Jamie Newman, Deputy Clerk

DATE: June 9, 2000

FOR AGENDA OF: June 12, 2000

**SUMMARY:**

On May 24, 2000 the city council held interviews for a municipal attorney. Birch, Horton, Bittner, & Cherot were selected and the council directed Mr. Cramer and Council Member Lowe to enter into contract negotiations with the firm.

The contract has been finalized and we are requesting that the council approve the contract with Birch, Horton, Bittner, & Cherot, and authorize funding in the amount not to exceed \$ 50,000, for the period of July 1, 2000 through June 30, 2003.

**FISCAL IMPACT:** \_\_No \_\_x Yes, amount requested: \$50,000  
Fund: 01.51.411.334.00

**COUNCIL MEMBER RECOMMENDED ACTION:**

Approval of CM to approve the legal services contract with Birch, Horton, Bittner, and Cherot, for the period of July 1, 2000 through June 30, 2003, and authorize funding.

Administration Initial:     *SP*    

Attachment: Professional Services Agreement

Presented to council on     6/12/00      
Action taken:  Approved     Denied  
other: \_\_\_\_\_  
Verified by     *K.*

## CONTRACT FOR PROFESSIONAL LEGAL SERVICES

In consideration of the mutual promises herein, the CITY OF WASILLA and the law offices of BIRCH, HORTON, BITTNER, AND CHEROT.

BIRCH, HORTON, BITTNER, AND CHEROT (contractor) agree as follows:

- A. Part I, consisting of 14 sections of Special Provisions;
- B. Part II, consisting of 11 sections of General Provisions.

### PART I SPECIAL PROVISIONS

#### **Section 1. Definitions.**

In this contract:

- A. "Mayor" means the Mayor of the City of Wasilla.
- B. "City" means the City of Wasilla.
- C. "Council" means the Wasilla City Council.

#### **Section 2. Scope of Services.**

- A. The City attorney shall act as legal advisor to the City council, administration and other officials of the City to include without limitation the following:
  - (1) To duly advise the council, administration, and other officials at meetings of the City council and at other functions as may be designated;
  - (2) To draft opinion letters regarding, among other subjects, the interpretation of the City codes, state and federal laws, and policies;
  - (3) To draft municipal ordinances involving all municipal matters;
  - (4) To review and provide opinions on codes, contracts, resolutions, and other written instructions which are submitted to the attorney by the City;
  - (5) To call attention of the council and/or mayor, as may be appropriate, to or of changes or developments in legal matters that affect the City; and

- (6) To perform other such duties as may be prescribed for the City attorney by ordinance or by direction of the council and/or mayor.
- B. The City attorney shall represent the City as attorney in civil and criminal proceedings affecting the City provided, however, the City council may hire independent counsel when in its judgement independent counsel is needed. The attorney will represent the City in litigation involving prosecution of municipal code violation when needed. Firms must be qualified to represent the City in all State of Alaska Courts, U.S. District Court, and before the Ninth Circuit Court of Appeals.
- C. The City attorney must work effectively with the City council, administration, board and commissions, and also with other public agencies with which the City has legal relations.
- D. The City attorney must be experienced and proficient in legal matters affecting the City, to include without limitation, federal and state constitutional law, federal and state non-constitutional law, AS 29, Matanuska-Susitna Borough Code, and Wasilla Municipal Code.
- E. All representation of the City shall continue until the matters or cases assigned are either closed out by mutual consent or are recalled by the City council, or where representation is precluded by the Alaska Rules of Professional Conduct.
- F. The contractor shall not engage any consultant, expert, or service without the prior approval of the mayor or council.
- G. All requests for contractor services must be approved by the council as a body and submitted to contractor by the Mayor's office.
- H. Provide toll-free telephone access to the City.
- I. The contractor shall:
  - (1) Provide the City with copies of any significant pleading and/or correspondence prior to filing/sending them.
  - (2) Obtain the City's approval of all expenses exceeding \$200.

**Section 3. Access to Municipal Personnel.**

The mayor shall secure the cooperation of the City personnel as necessary to assist the contractor's performance hereunder.

**Section 4. Contract Administrator.**

The City shall:

- A. Receive all information and notices the contractor is required to communicate to the City pursuant to this agreement.
- B. The mayor shall administer the contract on behalf of the City.

**Section 5. Term.**

- A. For purposes of case assignments, this contract becomes effective when signed on behalf of the City and shall continue for three years from date executed. The contract may be renewed for three additional years, with one-year extensions at the council's option.
- B. For purpose of assigned case completion this contract may be extended upon mutual consent.

**Section 6. Compensation**

- A. The contractor shall be compensated at the hourly rates enumerated in Attachment A. The attorney's fee schedule is to remain fixed for the first three years of the contract with three, one-year extensions at the council's option. If the council opts to extend the contract, the fee schedule may be negotiated. The contractor will also be reimbursed for other appropriate costs incurred to perform under this contract.
- B. The contractor shall be entitled to no compensation under this contract beyond the scope of the City's express obligations under subsection A. The City understands that instances may arise that require additional services. During these times the contractor will give the council an estimate of services requested and will return to the council prior to exceeding the estimate.
- C. As a condition of payment, the contractor shall have paid all municipal taxes currently due and owing by the contractor.
- D. The City and contractor reserve the right after three months of this contract have expired to review the time and material logs and if desired inter into negotiations for a fixed fee retainer schedule of payment for the duration of the contract. Should neither party choose not to enter into these negotiations or should these negotiations fail to produce an agreement, all original terms of the contract will be applicable for the duration of the contract.

**Section 7. Payment and Reporting.**

- A. The contractor shall submit itemized monthly billings to the City clerk for payment of all fees and costs for which the contractor seeks reimbursement under Section 6. Said monthly billings shall identify the subject of the work performed and the time, to the nearest one-tenth of an hour, spent on each subject. Costs shall be itemized and described separately on each monthly invoice.
- B. To avoid cost overruns, the contractor shall report the amount of legal services billed every month to the City clerk. The City will not be responsible for any amount billed over the specified contract amount in Section 6 above.
- C. Upon approved billing, payment will be remitted to the contractor within 45 days.
- D. A quarterly review between the contractor and the legal committee will be held to discuss performance and the needs of the City and contractor.

**Section 8. Termination of the Contractor's Services**

The contractor's services under Section 2 may be terminated:

- A. For convenience by the City council.
- B. By mutual consent of the parties.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notify the other party of its intent to terminate, stating with reasonable specificity City the grounds therefor, and the other party fails to cure the default within fifteen days after receiving the notice.

**Section 9. Duties Upon Termination.**

- A. If the contractor's services are terminated for the convenience of the City or by mutual consent of the parties, the contractor will be paid as provided for under Section 6. Total compensation will not exceed the amount stated in Section 6. All finished and unfinished documents, work product, and materials prepared by the contractor remain the property of the City.
- B. If the contractor's services are terminated for cause, the City shall pay the contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by the City because of the

contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall not exceed the contract rate for such services, and payment under this section shall not exceed ninety percent of the total compensation allowable under Section 6. Any finished or unfinished documents, work product, or materials prepared by the contractor under this contract shall become the property of the City.

- C. The contractor shall not be entitled to any compensation under this section until the contractor has delivered to the City clerk all documents, records, work product, and materials relating to this contract.
- D. If the contractor's services are terminated, for whatever reason, the contractor shall not claim any compensation, under this contract, other than that allowed under this section.
- E. Except as provided in this section, termination of the contractor's services under Section 8 does not affect any other right or obligation of a party under this contract.

**Section 10. Case Management.**

- A. Execution of the contract by the City shall act as full authority for the contractor to proceed with the representation of the City as provided hereunder.
- B. The City will have complete and total access to all material, information and files worked on by the contractor pursuant to this contract.

**Section 11. Assignments.**

Unless otherwise allowed by the mayor or as directed by the council, any assignment by the contractor of its interest in any part of this contract or any delegation of duties under this contract shall be void, and any attempt by the contractor to assign any part of its interest or delegate duties under this contract shall give the City the right to immediately terminate this contract without any liability for work performed.

**Section 12. Ownership; Publication, Reproduction and Use of Material.**

- A. The contractor agrees to discuss matters and reveal documents relating to this contract only with the City council and mayor, deputy administrator, City clerk, or any person authorized by the aforementioned, and as required by court order.

- B. Except as otherwise provided herein, all data, documents, work product, research, reports, and materials produced by the contractor under this contract shall be the property of the City, which shall retain exclusive right to publish, disclose, distribute, copy, and otherwise use, in whole or in part, any such data, documents, research, reports, or other materials.

**Section 13. Notices.**

Any notice required pertaining to the subject matter of this contract shall be either personally delivered, faxed, or mailed by prepaid first class registered or certified mail, return receipt requested to the following address:

City: City of Wasilla  
Attention: City Clerk  
290 E. Herning Avenue  
Wasilla, AK 99654  
FAX: (907) 373-9092

Contractor: Birch, Horton, Bittner, and Cherot  
Attention: Thomas F. Klinkner  
1127 West Seventh Avenue  
Anchorage, AK 99501  
FAX: 276-3680

**Section 14. Conflict of Interest.**

The contractor may not represent or assist private or public clients in connection with other claims, litigation, or other legal matters where such representation would constitute or appear to constitute a conflict of interest. In particular, the contractor shall comply with all relevant provisions of the Alaska Bar Rules and the Alaska Rules of Professional Conduct concerning the prohibition of conflicts of interest among clients. The contractor shall not accept any employment and shall not render any professional services to other parties if such action might be inconsistent with the above-referenced standards unless the prior approval of the City council has been first obtained.

**PART II  
GENERAL CONTRACT PROVISIONS**

**Section 1. Relationship of Parties.**

The contractor shall perform its obligations hereunder as an independent contractor of the City. The City may administer the contract and monitor the contractor's compliance with its obligations hereunder.

**Section 2. Nondiscrimination.**

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or mental or physical disability. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical disability. Such action shall include, without limitation, employment, upgrading, demotion, or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The contractor shall state, in all solicitations or advertisements for employees to work on contract jobs, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, or marital status, or mental or physical disability.
- C. The contractor shall comply with any and all reporting requirements that may apply to it which the City of Wasilla may establish.
- D. The contractor shall include the provisions of subsections A through C of this section in every subcontract or purchase order under this contract, so as to be binding upon every such subcontractor or vendor of the contractor under this contract.

**Section 3. Permits, Laws and Taxes.**

The contractor shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under this contract. All actions taken by the contractor under this contract shall comply with all applicable law to include without limitation, statutes, ordinances, rules and regulations. The contractor shall pay all City taxes as a condition of its performance under this contract.

**Section 4. Nonwaiver.**

The failure of either party at any time to enforce a provision of this contract shall in no way constitute a waiver of the provision, nor in any way effect the validity of this contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

**Section 5. Amendment.**

- A. This contract may be amended, modified, or changed only in writing and executed by the mayor or an authorized representative of the contractor.



- B. For the purpose of any amendment, modification, or change to the terms and conditions of this contract, the only authorized representatives of the parties are:
1. City of Wasilla, City Council
  2. Birch, Horton, Bittner, and Cherot  
Attention: Thomas F. Klinkner
- C. Any attempt to amend, modify, or change this contract by either an unauthorized representative or unauthorized means shall be void.

**Section 6. Jurisdiction; Choice of Law.**

Any civil action arising from this contract shall be brought in the Superior Court for the Third Judicial District of the State of Alaska, at Palmer. The laws of the State of Alaska shall govern the rights and obligations of the parties under this contract.

**Section 7. Severability.**

Any provision of this contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the contract.

**Section 8. Integration.**

This instrument and Attachment A hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

**Section 9. Insurance and Indemnification.**

- A. The contractor shall maintain in good standing the insurance described in Subsection B of this section. Before rendering any services under this contract, the contractor shall furnish the administrator with proof of insurance in accordance with Subsection B of this section in a form acceptable to the mayor, City clerk, or deputy administrator.
- B. The contractor shall provide the following types of insurance. The City of Wasilla shall be insured as additional insured on all insurance policies except Professional Liability and Worker's Compensation policies. All policies shall have a thirty-day notice of cancellation clause.

1. *Workers' Compensation*

\$100,000 Employer's Liability and Workers' Compensation as required by Alaska State Workers' Compensation Statues.

2. *Commercial Automobile Liability*

Bodily Injury and Property Damage, including all owned, hired and non-owned automobiles.

\$1,000,000 Each Occurrence and Aggregate \$1,000,000

3. *Professional Liability*

Agree to provide lawyer's professional liability insurance for all periods under the contract and provide an extended reporting period endorsement after the end of the contract for three years. Without request by the City, the contractor shall provide proof of such insurance during the contract period and proof of such endorsement after the end of the contract. The contractor's carrier must agree to notify the City 30 days before cancellation of insurance or of the extended reporting period endorsement. The insurance shall provide coverage for claims up to a minimum amount of \$1,000,000 per claim.

- C. To the fullest extent permitted by law the contractor agrees to defend indemnify and hold harmless the City of Wasilla, its elected and appointed officials, employees, and volunteers against any and all liabilities, claims, demands, lawsuits or losses including costs and attorney fees, and appellate attorney's fees, incurred in defense thereof arising out of or in any way connected or associated with this contract.

**Section 10. Inspection and Retention of Records.**

The contractor shall at any time during normal business hours and as often as the mayor or City council may deem necessary, make available to the City for examination all records with respect to all matters covered by this contract for a period ending three years after the date of the contractor is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the contractor shall submit such other information and reports relating to its activities under this contract to the City in such a form and at such times as the City council may reasonably require. The contractor shall permit the City council or their designee to audit, examine, and make copies of such records, and to make audits of all research, materials, pleadings, records of personnel and other data relating to all matters covered by this contract. The City may, at its option, permit the contractor to submit its records to the City in lieu of the retention requirements of this section.

**Section 11. Availability of Funds.**

This contract is subject to the availability of funds lawfully appropriated for its performance.

IN WITNESS WHEREOF, the parties have executed this contract:

CITY OF WASILLA

\_\_\_\_\_  
SARAH PALIN, MAYOR

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
KRISTIE L. VANGORDER, CMC  
City Clerk

\_\_\_\_\_  
BIRCH, HORTON, BITTNER, AND CHEROT

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IRS Tax No. \_\_\_\_\_

State of Alaska)  
Third Judicial District)  
  
Subscribed and sworn before me  
on \_\_\_\_\_  
(Date)  
  
\_\_\_\_\_  
Notary Public  
  
Commission Expiration: \_\_\_\_\_

**PROPOSED FEE SCHEDULE**

BHB&C proposes to charge the City for professional services in accordance with the rates and procedures stated below.

Discounted Hourly Rates. BHB&C proposes the following schedule of discounted hourly rates for professional services to the City:

Partners/Members:	\$ 150.00 per hour
Senior Associates:	135.00 per hour
Associates:	115.00 per hour
Paralegals/Law Clerks:	75.00 per hour

There will be no charge to the City for time spent traveling, except when the attorney actually is performing work for the City while en route. Attorneys will be made available on call for telephonic participation in City meetings without charge for "standby" time. It is our practice to bill at our hourly rate for actual attendance at meetings.

Expense Reimbursement. For out-of pocket expenses incurred in the course of representation, the City would be billed the actual cost. Such expenses include long distance telephone charges, expedited mail or courier service, filing and recording fees, computerized research fees and travel expenses. Certain in-house expenses, such as photocopying and messenger service, are billed at standard rates. We do not bill for secretarial time or word processing services.

Proposal Fee Computation. The following schedule applies our discounted partner rate of \$150 per hour to the items in the schedule included in the Request for Proposals. The partner rate is used for ease of comparison. It is our policy to assign tasks to qualified, less expensive timekeepers (associates and paralegals) whenever possible, with resulting savings to the client. The savings resulting from such delegations of work ordinarily would reduce the total amount stated for items such as drafting documents, researching, and preparing for court appearances. Depending on circumstances, such delegations also could reduce the total cost of other scheduled items.

Preparing for and attending two Council meetings per month for ten hours	\$ 1,500
Drafting documents for eight hours	1,200
Research for four hours	600
Consulting on phone or in person for fourteen hours	2,100
Preparing for court appearances for six hours	900
Appearing in court for two hours	<u>300</u>
 TOTAL	 <u>\$6,600</u>