



	Approved	Denied
Action taken	3/22/04	
Other:		
Verified by:	<i>K. Smith</i>	

WASILLA CITY COUNCIL ACTION MEMORANDUM

AM No. 04-20

TITLE: AUTHORIZATION FOR CITY INSPECTOR AS CONTRACT EMPLOYEE IN THE AMOUNT NOT TO EXCEED \$79,000 FROM MARCH 12, 2004 TO JUNE 30, 2005.

Agenda of: March 22, 2004
 Originator: Public Works Director

Date: March 15, 2004

Route to:	Department	Signature/Date
	Police	
	Recreational and Cultural Services Library, Museum	
	Public Works Planning	<i>[Signature]</i>
X	Finance *signature required	<i>[Signature]</i> 3/15/04
X	Clerk	<i>[Signature]</i>

REVIEWED BY MAYOR DIANNE M. KELLER: *Dianne M. Keller*

FISCAL IMPACT: yes \$ 79,000 or no Funds Available yes no
 Account name/number: Capital Projects
 Attachments: draft contract

SUMMARY STATEMENT: Work continues on the Sports Complex and the City is unable to continue using the City Inspector as a "temporary" employee. The administration is proposing to convert the position to a contract employee that can be used longer than 6 months per year, on an "as-needed" basis. This position will continue to be funded by the capital projects on an hourly basis.

STAFF RECOMMENDED ACTION: Council is requested to authorize the contract for a city inspector in the amount not to exceed \$79,000 from March 12, 2004 to June 30, 2005.

CITY OF WASILLA EMPLOYMENT AGREEMENT

THIS EMPLOYEE AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 2004, by and between the City of Wasilla ("**City**") and Edward J. "Burgie" Burgholzer ("**Employee**")

Based upon the consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. Employment.

The City hereby employs Employee, and Employee agrees to be employed by the City as an Inspector to perform the duties and responsibilities provided for in the City Inspector Job Description, which is attached to this Agreement as Exhibit A and incorporated into this Agreement. Employee will report to the Mayor of the City or her designee for this Agreement, the Director of Public Works. Employee shall devote his time and attention to achieving the purposes of the City and discharging his responsibilities pursuant to the position he holds. Employee shall comply with all ordinances, rules, policies and procedures of the City as now in effect or that may be effective in the future, including but not limited to the ordinances, rules, policies and procedures specifically enumerated in Exhibit A. Employee shall perform all of his responsibilities in compliance with all applicable laws including but not limited to the laws specifically enumerated in Exhibit A. Employee shall devote as many hours to the position of City Inspector as are required.

2. At-Will Employment.

Employment with the City shall be at will, and either Employee or the City may terminate the employment relationship at any time, with or without reason or advance notice. Any representations to the contrary, whether written, verbal, or implied by any City communication, conduct or practice, are unauthorized and void unless contained in a formal written amendment to this Agreement signed by the Mayor and Employee.

3. Death or Disability.

This Agreement and Employee's employment hereunder shall terminate automatically upon the death or Total Disability of Employee. The term "**Total Disability**" as used herein shall mean Employee's inability as determined in good faith by the City to perform the essential functions of his job hereunder for a period or periods aggregating ninety (90) calendar days in any 12-month period as a result of a physical or mental condition, unless Employee is granted a leave of absence by the City. Employee and the City hereby acknowledge that Employee's ability to perform the duties provided for in Section 1 of this agreement and Exhibit A to this Agreement is of the essence of this Agreement. If Employee's employment is terminated as a result of Employee's death or Total Disability, this Agreement shall terminate without further obligations to Employee, other than for payment of compensation earned prior to the termination date.

4. Compensation.

For the duration of Employee's employment hereunder, Employee shall be entitled to compensation that shall be computed and paid pursuant to the following subsections:

- 4.1 Pay.** Employee shall be paid on an hourly basis as needed at the rate of \$30 per hour payable in equal installments in accordance with the City's normal payroll practices, including appropriate deductions and withholding.
- 4.2 Overtime.** Employee is eligible for overtime in accordance with the provisions of the Wasilla Municipal Code.
- 4.3 Benefits.** Employee shall participate in the State of Alaska Supplemental Benefits System ("SBS"). It is expressly understood and agreed that Employee shall not be entitled to any other employee benefits or fringe benefits under this Agreement, which the City may otherwise provide to its employees. Employee acknowledges and understands that the City shall not pay into the Public Employee Retirement System (PERS) on Employee's behalf and that Employee is not eligible for participation in the PERS program under this Agreement. The Employee also acknowledges that he waives participation in the City health insurance program.

5. Representation and Acknowledgement of Employee.

Employee represents and warrants to the City that Employee is free to enter into this Agreement and that Employee has no commitment, arrangement or understanding to or with any party that restrains or is in conflict with Employee's performance of the covenants, services and duties provided for in this Agreement and in Exhibit A to this Agreement.

6. Severability.

In the event that any provisions of this Agreement or compliance by any of the parties with any provisions of this Agreement shall constitute a violation of any law, or be deemed unenforceable or void, then such provisions, to the extent only that it is in violation of law, or is deemed void or unenforceable, shall be deemed modified to the extent necessary so that it is no longer unenforceable, void or in violation of law and shall be enforced to the fullest extent permitted by law. If such modification is not possible, said provision, to the extent that it is in violation of law, void or unenforceable, shall be deemed severable from the remaining provisions of this Agreement, which provisions shall remain binding on the parties.

7. Entire Agreement.

This Agreement and Exhibit A contains the entire agreement of the parties, and supersedes any prior or contemporaneous statements or understanding by or between the parties. This Agreement may be changed only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought, and any such modification on behalf of the City must be approved by the Mayor.

8. Governing Law / Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. The parties hereby irrevocably and unconditionally agree to submit any legal action or proceeding relating to this Agreement to the non-exclusive general jurisdiction of the Superior Court of the State of Alaska at Palmer, Alaska, and, in any such action or proceeding, consent to jurisdiction in such court and waive any objection to venue in any such court.

9. Fees.

Unless otherwise agreed, the prevailing party shall be entitled to its full reasonable attorney fees and costs incurred in any litigation relating to the interpretation or enforcement of this Agreement.

10. Survival.

Section 5 through 12 survive any termination of this Agreement or Employee's employment relationship with the City.

11. Nonwaiver.

Failure of the City to insist upon strict adherence to any provisions of this Agreement or to enforce any provision, on one or more occasions, shall not be deemed to be a waiver of its rights to enforce any provision in the future.

12. Employee Recognition of Agreement.

Employee acknowledged that Employee has read and understood this Agreement and agrees that its terms are necessary for the reasonable and proper protection of the City. Employee Acknowledges that Employee has been advised by the City that Employee is entitled to have this Agreement reviewed by an attorney of Employee's selection, at Employees expense, prior to signing, and that Employee has either done so or elected to forgo that right.

EMPLOYEE

CITY OF WASILLA

Edward J. "Burgie" Burgholzer

Mayor Dianne M. Keller

