

CONTRACT FOR GENERAL COUNSEL LEGAL SERVICES

Agreement dated as of August 1, 2016 between the CITY OF HOMER, an Alaska municipal corporation ("City"), and BIRCH, HORTON, BITTNER, INC., an Alaska professional corporation, d/b/a Birch, Horton, Bittner and Cherot ("Firm").

Section 1. Definitions. In addition to the terms defined above, in this contract:

- A. "Council" means the City Council of the City.
- B. "Manager" means the City Manager of the City.

Section 2. Scope of Services.

A. The Firm shall act as general counsel to the City, to include without limitation the following:

- Serve as the legal advisor of and be responsible to the Council; advise the Manager and City Clerk concerning matters affecting the City Administration and perform other duties prescribed by the Council.
- Prepare legal documents, including but not limited to ordinances, resolutions, contracts, conveyances, leases, easements and legal opinions as needed.
- Be readily available for consultation by the Council, Manager and City Clerk.
- Provide limited representation in court and manage the activities of other attorneys who may represent the City in court.
- Assist the Manager in negotiations on the City's behalf and handle other legal matters that may arise.
- Draft opinion letters regarding, among other things, the interpretation of the City Code, state and federal laws, and policies.
- Perform other such duties as may be prescribed for the City Attorney by ordinance or by direction of the Council and/or Manager.
- Work effectively with the Council, Manager, City Clerk and with all other public agencies and other entities with which the City has a legal relationship.
- Attend at least one Council meeting per month and others telephonically as requested.

B. 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 Council.

C. The Firm shall not engage any consultant, expert, or other third-party service without the prior approval of the Manager or Council.

D. Provide toll-free telephone access to the City.

Section 3. Access to City Personnel. The Manager shall secure the cooperation of City personnel as necessary to assist the Firm's performance hereunder.

Section 4. Contract Administrator. The Manager shall administer this contract on behalf of the City.

Section 5. Term.

A. Initial Term. This contract becomes effective when signed on behalf of both parties and shall continue in effect for four years.

B. Option to Extend. Council shall have the option to extend this Agreement for a one (1) year term commencing on the expiration of the Initial Term. The City must give Firm written notice of its election to extend. All the terms and conditions of this Agreement shall apply during any extended term. No additional options to extend shall be created by City's election to extend this Agreement.

Section 6. Attorney Assignment. Holly C. Wells is the Firm attorney who will be principally responsible for performing or supervising the work to be done by the Firm on the City's behalf and who will be the City's principal contact with respect to contract administration and billing. The responsible attorney will not be changed without the consent of the City. The responsible attorney may, in his or her discretion, assign additional Firm attorneys, paralegals, and law clerks to perform legal services under his or her supervision.

Section 7. Compensation. The Firm shall be compensated for services performed during the first two years of the term of this contract as follows:

A. A monthly fixed fee of \$11,500 to provide 65 hours of general counsel service per month plus travel to Homer for 12 Council meetings per year. This fee includes all travel time and travel-related expenses for attendance at the 12 Council meetings.

B. The following hourly rates for work above and beyond 65 hours per month or for specialized services (i.e., litigation): Shareholders and members: \$215; associates: \$189; paralegals: \$105.

C. For travel time between Homer and Anchorage above the contracted 12 trips, one-half the applicable hourly rate, plus actual out-of-pocket expenses.

D. Except for travel expenses described in subsection A of this section, the City shall reimburse the Firm for in-house expenses and third-party expenses incurred on the City's behalf. Such expenses may include applicable filing fees, recording fees, facsimile services, courier services, photocopying at \$0.20 per page, long distance telephone charges, postage, expedited mail or delivery services, travel expenses, service of process fees, deposition transcripts, stenographer fees, computer-assisted legal research fees, title insurance premiums, and other similar charges.

E. The Firm shall receive written consent from the City Manager or her designee for any and all costs estimated to exceed \$1,500 in one transaction for a single timekeeper.

Commencing August 1, 2018, and for the remainder of the term of this contract, the monthly retainer amount in A of this section and the hourly rates in B of this section shall increase by the cost of living increase as stated in the Consumer Price Index, All Urban Consumers, Anchorage, Alaska Area, All Items 2000 – present = 100 ("CPI-U"), as published by the United States Department of Labor, Bureau of Labor Statistics but shall not exceed 5%.

Section 8. Statements and Payment.

A. The Firm shall submit itemized monthly statements to the City for all fees and costs incurred during the preceding calendar month. Monthly statements 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 statement.

B. Payment of monthly statements will be remitted to the Firm within 30 days. A late charge on amounts past due for 30 days or more will be assessed at the rate of .88% per month, or at the highest rate allowed by applicable law.

Section 9. Insurance. The Firm shall maintain in good standing the following insurance during the term of this contract, and shall furnish the City Manager with proof of the required insurance coverage before rendering any services under this contract:

A. Worker's compensation insurance as required by AS 23.30.045, including employer's liability protection not less than \$100,000 per person, \$100,000 per occurrence.

B. Comprehensive automobile liability insurance, covering all owned, hired and non-owned vehicles with coverage limits not less than \$300,000 per person/\$300,000 per occurrence.

C. Professional liability coverage for claims up to a minimum amount of \$1,000,000 per claim for the term of this contract, plus a three-year extended reporting period endorsement after the end of the contract.

Section 10. Records. Subject to the transfer of a file to another attorney at the City's request, the Firm shall retain and maintain all significant components of the files concerning each matter in which the Firm provides services to the City for a period of six years following the conclusion of representation of the City in the matter. During such time the Firm will afford City representatives reasonable access to each such file. At any time after the end of this six-year retention period, the Firm, in its discretion, may destroy the file and its contents without further notice to the City. The Firm will deliver to the City the originals of any documents in a file at the time the file is closed.

Section 11. Termination of Services. The Firm's services under Section 2 may be terminated:

A. For convenience by the City.

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 the grounds therefor, and the other party's failure to cure the default within 15 days after receiving the notice.

Section 12. Notices. Any notice pertaining to this contract shall be either personally delivered, faxed or mailed by prepaid first class registered or certified mail, return receipt requested as follows:

City: City of Homer
Attention: City Manager
491 East Pioneer Avenue
Homer, Alaska 99603
FAX: (907) 235-3140

Firm: Birch, Horton, Bittner and Cherot
Attn: Thomas F. Klinkner

1127 West 7th Avenue
Anchorage, Alaska 99501
FAX: (907) 276-3680

Section 13. Amendment. This contract may be amended only by a writing executed by each party.

Section 14. Integration. This instrument embodies 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.

IN WITNESS WHEREOF, the parties have executed this contract as of the date first written above.

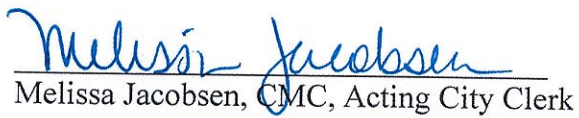
CITY OF HOMER

BIRCH, HORTON, BITTNER and CHEROT


Mary E. Wythe, Mayor


Holly C. Wells

ATTEST:


Melissa Jacobsen, CMC, Acting City Clerk



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

Memorandum 16-076

TO: Mayor Wythe and Homer City Council
FROM: Katie Koester, City Manager
DATE: May 4, 2016
SUBJECT: Contract with Birch Horton Bittner & Cherot

The City Attorney is hired by and serves at the pleasure of the Council. Birch Horton Bittner & Cherot (BHB) has been Homer's municipal attorney for the past 8 years. Their contract was renewed in 2012 for 4 years. They charge the city a flat fee for an unlimited amount of consulting services (drafting ordinances, negotiations, advice, legal opinions, lease reviews, etc.). Though their contract limits their retainer services to 50 hours a month, they have not applied that cap for some time. This includes travel to one Council meeting a month, and as of recently telephonic attendance at department head staff meetings. Any litigation is charged an hourly rate.

Per the contract signed in June of 2012, BHB monthly retainer amount for 2016 is \$12,000. The City spends a tremendous amount on legal fees - consistently over \$250,000 a year. However, much of that is due to the litigious nature of our community. Though Attorney Tom Klinkner has served as lead counsel for the City of Homer since 2008, last month he handed over the reins to Holly Wells. As you know, BHB also has a number of attorneys on staff ranging from specialists in human resources to construction law that we lean on frequently.

I gave notice in November in my City Manager's report the intention to re-RFP the attorney contract, though it is a Council decision. Like any human, there have been mistakes made by the attorneys representing the City of Homer and hindsight is 20/20. However, there have also been successes - and the times the attorney's advice and assistance keeps the City of Homer out of court are the ones you are less likely to hear about. There are benefits to advertising an RFP, even if BHB is the best respondent. However, I believe that the risk of bringing someone on who is not familiar with city code and the unique character of Homer would be detrimental. If I had 12 years of experience with Homer City Code and could provide the historical knowledge, it would be a different story. However, I am one year into this job and often lean on the attorneys to remember how it was done before and help to not repeat past mistakes. I communicate with BHB multiple times a day, and that is just me - they are working on projects with many of the department heads from re-writing agreements, providing human resources advice, to helping the Cannabis Advisory Commission negotiate the complex world of marijuana.

What about an in-house attorney? I have given thought about the cost/benefit of hiring a City Attorney in house as a City employee. It would be great for the community to provide that

position and I would appreciate having someone to bounce issues off of. However, I think it would be very expensive and difficult to find an employee with the breadth of knowledge in municipal law that is necessary. The City would likely still have to hire outside counsel with specific knowledge (whereas with a large firm we can use the expertise of many different lawyers). At times, one staff person may have a difficult time keeping up with the work load, at any given time we have multiple attorneys working under deadline on City of Homer issues. There would also be the concern of creating a new class of employees that would then be subject to PERS termination fees and fines if we ever changed our mind and went back to not having a designated employee as the City Attorney. It would be expensive – the City of Kenai is the only municipality on the Peninsula of comparable size with a City Attorney. Their legal department, an attorney and legal assistant, comes in at \$375,807 for 2015 budget. Just over 70% of that is salaries and benefits. The Professional and special services line, which I presume is used to hire outside counsel, since 2013 varies from \$32,500- \$83,000.¹

BHB has done a good job representing the City of Homer. As their firm grows and evolves with new attorneys and Attorney Wells taking on the reins as lead attorney for Homer, I think they will continue to be able to serve us well. If the Council authorizes a new contract with BHB, I would use the existing contract as a starting place for negotiations, which BHB is agreeable to.

¹ City of Kenai 2015 Adopted Budget, p. 42-43

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 16-049

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
AUTHORIZING THE CITY MANAGER TO NEGOTIATE A NEW CITY
ATTORNEY CONTRACT WITH BIRCH HORTON BITTNER & CHEROT
FOR THE PERIOD OF AUGUST 1, 2016 THROUGH JULY 31, 2019.

WHEREAS, Birch Horton Bittner & Cherot (BHBC) has been the City's Attorney since August 1, 2008, selected and hired by the City Council; and

WHEREAS, BHBC has the expertise and experience of a national firm combined with the knowledge and understanding of Alaska's unique legal issues; and

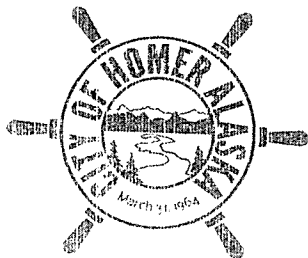
WHEREAS, BHBC has a number of attorneys on staff ranging from specialists in human resources to construction law that the City uses frequently; and

WHEREAS, It is the recommendation of administration that a new contract be negotiated for a three-year period from August 1, 2016 to July 31, 2019; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska, authorizes the City Manager to negotiate a new City Attorney Contract with Birch Horton Bittner & Cherot for a three-year period from August 1, 2016 to July 31, 2019.

PASSED AND ADOPTED by the Homer City Council this 9th day of May, 2016.

CITY OF HOMER



Mary E. Wythe
MARY E. WYTHE, MAYOR

ATTEST:

Jo Johnson
JO JOHNSON, MMC, CITY CLERK

Fiscal information: Budgeted, Mayor and Council, Professional Services, 100.100.5210.

*Failed
5/09/16*

**CITY OF HOMER
HOMER, ALASKA**

City Manager

RESOLUTION 16-050

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
AUTHORIZING THE CITY MANAGER TO ISSUE A REQUEST FOR
PROPOSALS (RFP) FOR GENERAL COUNSEL LEGAL SERVICES.

WHEREAS, The City of Homer has maintained a contract with the firm of Birch Horton Bittner & Cherot for legal services since 2008 and has been serviced by Attorney Thomas F. Klinkner for that period of time; and

WHEREAS, An RFP for legal services would seek to identify specific legal/substantive expertise to service the City of Homer and would provide routine due diligence on quality and cost of legal services; and

WHEREAS, City Council has determined it is in the best interests of the City to solicit proposals for general counsel legal services to serve the Homer City Council, City Manager and City Commissions as appropriate.

NOW, THEREFORE, BE IT RESOLVED that the Homer City Council authorizes the City Manager to issue a Request for Proposals for General Counsel Legal Services.

PASSED AND ADOPTED by the Homer City Council this 9th day of May, 2016.

CITY OF HOMER

MARY E. WYTHER, MAYOR

ATTEST:

JO JOHNSON, MMC, CITY CLERK

Fiscal Note: Costs associated with legal services to be determined.