



City of Homer

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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