



	Approved	Denied
Date Action Taken:	3/10/08	
Other:		
Verified by:	[Signature]	

WASILLA CITY COUNCIL ACTION MEMORANDUM

AM No. 08-15

TITLE: AWARD OF SOLE SOURCE CONTACT FOR PROFESSIONAL SERVICES TO GEARIETY LAW OFFICE, PLLC, IN AN AMOUNT NOT TO EXCEED \$100,000 TO ASSIST WITH UNION NEGOTIATIONS SUBJECT TO APPROPRIATIONS BY THE CITY COUNCIL

Agenda of: March 10, 2008

Date: February 29, 2008

Originator: Marvin Yoder, Acting Deputy Administrator

Route to:	Department	Signature/Date
	Public Works & Recreation Facility Maintenance Director	[Signature] 2/29/08
X	Finance, Risk Management & MIS Director Purchasing	[Signature]
X	Deputy Administrator Planning, Economic Development, Human Resources	[Signature]
X	City Clerk	[Signature]

REVIEWED BY MAYOR DIANNE M. KELLER: [Signature]

FISCAL IMPACT: yes \$100,000___ or no Funds Available yes no

Account name/number: Public Works/001-4310-431-30.34
Police Department/001-4210-420-30.34
Sports Complex/340-4530-453-30.34

Attachments: Agreement with Gearity Law Office, Justification for Sole Source

SUMMARY STATEMENT: The City is preparing to enter into labor negotiations with the International Union of Operating Engineers Local 302. The City Attorneys, Birch, Horton, Bittner & Cherot will advise the City on all legal matters associated with union activity. However, they have requested the City contract with Gearity Law Office PLLC to obtain the services of Kimberly Gearity as the lead negotiator in the upcoming negotiations.

This is a sole solicitation for two reasons. 1) In our first meeting with Local 302 they requested negotiations to begin early April. The City asked for a month delay to get our team in place and up to speed. An RFP would push the beginning negotiations much later. This would be detrimental to the negotiation process. 2) There are a very limited number of Management "negotiators" available.

Work under this contract will be on an hourly basis as funds are available. At this point, only the Public Works Department has been authorized to form a union. Funding for this contract through the end of the fiscal year for Public Works is estimated at \$20,000 and this amount will need to be transferred from various accounts if funding is available. Currently, approximately \$12,000 is available in the identified account. Additional funding will be budgeted in FY09 for Public Works up to \$50,000 depending on Council appropriation.

If unions are formed at the Sports Complex and/or Police Department, funding will follow the same format as described above for the Public Works Department. The amount estimated at \$100,000 assumes all three unions will be formed and the contract term will be 1 year.

ACTION: Authorize the Mayor to execute a contract with the Gearity Law Office for union negotiations.

PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into as of the 11th day of March 2008 (the "Effective Date") by and between the City of Wasilla ("City"), 290 E. Herning Avenue, Wasilla, Alaska 99654, telephone (907) 373-9055, fax (907) 373-9096, and Gearity Law Office PLLC, 1500A East College Way #549, Mt. Vernon, WA 98273, telephone 360-336-5245, fax 360-336-5249.

In consideration of the mutual covenants herein, the parties agree as follows:

1. Services.
 - a. Contractor shall provide labor negotiation consulting services to the City of Wasilla for the upcoming negotiations with Local 302 and potentially two other unions once the elections determine their status.
 - b. Contractor will provide the following services:
 - i. Provide ongoing advice and assistance regarding the conduct of collective bargaining and the development of labor relations for the City.
 - ii. Representing the City as its Chief Spokesperson at the bargaining table.
 - c. Contractor shall render Services under this Agreement for a period of one year from the Effective Date. City, at its option, may extend the term of Contractor's performance for up to two additional one-year periods.
2. Payment.
 - a. The total compensation payable to Contractor under this Agreement for fees and expenses during the first year of Contractor's performance shall not exceed \$100,000.00. Upon exercising its option to extend the term of this Agreement, City shall determine the maximum compensation that will be payable to Contractor during the extended term.
 - b. City shall pay Contractor for the Services according to time spent by Contractor at the hourly rate of \$195.00 per hour for time spent working in Contractor's Washington office, and \$225.00 per hour for time spent working while traveling.
 - c. In addition, hotel costs, airfare, car rental, meal, and related expenses for travel to Wasilla shall be reimbursed.
 - d. Billing shall be done on a monthly basis and payment shall be Net 30.
3. Assistance from Other City Consultants. Contractor shall work with other City consultants as may be necessary to carry out the terms of each of the Section 1.

4. Drawings and other Documents.
 - a. The drawings, specifications and other documents prepared by Contractor under this Agreement (collectively, the "Documents") are the sole property of City, and City shall own all common law, statutory and other reserved rights, title and interest to the documents, including but not limited to copyrights. All works of authorship shall be deemed to be "works made for hire" as defined in the Copyright Act, 17 U.S.C. Sec. 101.
 - b. Upon termination of this Agreement, Contractor shall provide all Documents to City, but Contractor shall be entitled to retain copies of all of the Documents.
 - c. Upon request by City at any time prior to termination of this Agreement, Contractor shall provide to City copies of any Documents it requests in writing.
5. Termination. Notwithstanding anything to the contrary in this Agreement:
 - a. Either party may terminate this Agreement for a material breach of this Agreement by the other party which remains uncured 30 days after written notice is delivered to the breaching party.
 - b. Contractor shall notify City of any change in staff described in Contractor's proposal. City reserves the right to suspend or terminate this Agreement if City determines that a staff change alters the Contractor's ability to perform. City also reserves the right to terminate this Agreement at any time if it determines that the proposed staff are not available or assigned to perform under this Agreement.
 - c. City may terminate this Agreement by providing written notice to Contractor at any time, with or without cause.
6. Effect of Termination.
 - a. If this Agreement is terminated by City under Section 5.b or c, City shall only be obligated to pay Contractor for that portion of the Services completed prior to such termination and all approved expenses incurred by Contractor prior to such termination.
 - b. Upon termination for any reason, Contractor shall immediately cease performance under this agreement and Contractor shall provide City with all documents, information and other work product relating to the Services.
 - c. The provisions of Sections 4 and 7 shall survive the termination of this Agreement for any reason whatsoever.

7. Standard Terms and Conditions. This Agreement shall be subject to City's standard terms and conditions, attached as Attachments A and B. In the event of any conflict between the terms set forth in this Agreement and in those Attachments, notwithstanding anything to the contrary in this Agreement or in those Attachments, the terms of this Agreement shall govern.

CITY OF WASILLA

GEARIETY LAW GROUP PLLC

By: _____
Dianne M. Keller, Mayor

By: _____
Kimberly K. Geariety

ATTACHMENT A - GENERAL PROVISIONS

1. Inspection and Reports:

- a. City may inspect, in the manner and at reasonable times it considers appropriate, all Contractor's facilities and activities under this Contract.
- b. Contractor shall make progress and other reports in the manner and at the times City reasonably requires.

2. Disputes:

- a. Arbitration. The parties hereto agree, upon demand by any party, to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise arising out of or relating to in any way this Agreement and related documents which are the subject of this Agreement and its negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination.
- b. Governing Rules. Any arbitration proceeding will (i) proceed in a location in Alaska selected by the American Arbitration Association ("AAA"); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's commercial dispute resolution procedures (the commercial dispute resolution procedures to be referred to, as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute.
- c. Arbitrator Qualifications and Powers. Any arbitration proceeding will be decided by a single arbitrator selected according to the Rules. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of Alaska and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary

to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Alaska Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

3. Equal Employment Opportunity:

- a. Contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin or because of age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. Contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical handicap, age, sex, marital status, changes to marital status, pregnancy or parenthood. This action must include the following: employment, upgrading, demotion, transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- b. Contractor shall state, in all solicitations or advertisements for employees to work on City Contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, physical handicap, sex, marital status, changes in marital status, pregnancy or parenthood.
- c. Contractor shall send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other Contract or understanding a notice advising the labor union or workers' compensation representative of Contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- d. Contractor shall include the provisions of this article in every Contract, and shall require the inclusion of substantially similar provisions in every Contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor.

4. Termination: City, by written notice, may terminate this Agreement, in whole or in part, when it is in the best interest of City. City is liable only for payment in accordance with

the payment provisions of this Agreement for services rendered before the effective date of termination.

5. Authorized Representative: Chief of Police of City is the only authorized representative of City under this Agreement unless Contractor is notified in writing by the Chief of Police that another individual has been delegated the authority to act on behalf of City for purposes relating to this Agreement. All communications must be directed to the attention of the Chief of Police.
6. No Assignment or Delegation: Contractor may not assign or delegate this Agreement, or any part of it, or any right to any of the money to be paid under it, except with the written consent of City.
7. Costs Not to Exceed Contract Amount: CONTRACTOR ASSUMES THE RISK THAT SERVICES AND EXPENSES MAY EXCEED THE PAYMENT CAPS SET FORTH IN THE AGREEMENT. City SHALL NOT BE LIABLE FOR AMOUNTS ABOVE SUCH PAYMENT CAPS UNLESS IT AGREES IN WRITING OTHERWISE.
8. No Additional Work or Material: No claim for additional services, not specifically provided in this Agreement, performed or furnished by Contractor, will be allowed, nor may Contractor do any work or furnish any material not covered by this Agreement unless the work or material is ordered in writing by City.
9. Independent Contractor: Contractor and any agents and employees of Contractor act as independent contractors to City and are not officers, employees, agents, partners or joint ventures of City in the performance of this Agreement.
10. Payment of Taxes: As a condition of performance of this Agreement, Contractor shall pay all federal, State, and local taxes incurred by Contractor and shall require their payment by any Subcontractor or any other persons in the performance of this Agreement. Satisfactory performance of this paragraph is a condition precedent to payment by City under this Agreement.
11. Documents: Contractor, for a period of three years after final payment under this Agreement, agrees to furnish and provide access to all retained materials at the request of City. Unless otherwise directed by City, Contractor may retain copies of all the materials.
12. Governing Law: This Agreement is governed by the laws of the State of Alaska, excluding choice of law principles. Subject to Section 2, all actions concerning this Agreement shall be brought solely in Anchorage Superior Court.
13. Conflicting Provisions: Unless specifically provided in writing either in this Agreement or an amendment to this Agreement, the General Provisions of this Agreement supersede any other provisions.

14. **Officials Not to Benefit:** Contractor must comply with all applicable federal and state laws regulating ethical conduct of public officers and employees.

ATTACHMENT B - INSURANCE

Without limiting the Consultant's indemnification, it is agreed that Consultant shall purchase at its own expense and maintain in force at all times for the duration of this contract, plus one year following the date of final payment, policies of insurance listed below. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Consultant's policy contains higher limits, the City of Wasilla shall be entitled to coverage to the extent of such higher limits. The Consultant must provide certification of proper insurance coverage or binder to the City of Wasilla. The certificate of insurance supplied to the City shall state that the City is named as "Additional insured for any and all work performed for the City of Wasilla." The Additional Insured requirement does not apply to Professional Liability and Workers Compensation insurance. Proof of the following insurance is required before award:

Commercial General Liability Insurance. The Consultant must maintain Commercial General Liability Insurance in an amount it deems reasonably sufficient to cover any suit that may be brought against the Consultant. This amount must be at least one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate.

Professional Liability Insurance. The Consultant must maintain Professional Liability Insurance in an amount not less than one million dollars (\$1,000,000.00) per claim/one million dollars (\$1,000,000.00) aggregate to protect the Consultant from any claims or damages for any negligent act, error or omission of the Consultant, the Consultant's firm, employees, or subcontractors (which results in a financial loss to the City).

Workers Compensation Insurance. The Consultant must maintain Workers Compensation Insurance to protect the Consultant from any claims or damages for any personal injury or death which may arise from services performed under this contract. This requirement applies to the Consultant's firm, the Consultant's subcontractors and assignees, and anyone directly or indirectly employed to perform work under this contract. The Consultant must notify the City as well as the State Division of Workers Compensation immediately when changes in the Consultant's business operations affect the Consultant's insurance status. Statutory limits apply to Workers Compensation Insurance. The policy must include employer's liability coverage of one hundred thousand dollars (\$100,000.00) per injury, and five hundred thousand dollars (\$500,000.00) policy limits.

Comprehensive Automobile Liability Insurance.

The policy shall have *minimum* coverage bodily injury liability limits of \$1,000,000 combined single limit per occurrence or split limits of \$1,000,000 per person/\$1,000,000 per occurrence. The policy shall cover all owned, hired and non-owned vehicles. In addition, it shall have a minimum of \$1,000,000 per occurrence property damage liability limits.

Each policy shall be endorsed to waive all rights of subrogation against the City by reason of any payment made for claims under the above coverage, except Workers Compensation and Professional Liability.

All coverages shall be provided by a carrier authorized to transact business in Alaska and shall be primary. Work on the contract shall not begin until after the awarded company has submitted acceptable evidence of the required insurance coverages. Failure to maintain any required insurance coverage or acceptable alternative method of insurance will be deemed a breach of contract.

Notwithstanding any other requirement of this section, the City reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies required by the above-stated Insurance Requirements schedule. It will be the awarded company's responsibility to recommend to the City alternative methods of insuring the contract. Any alternatives proposed by a company should be accompanied by a detailed explanation regarding the company's inability to obtain insurance coverage as described above. The City, with the assistance of the State of Alaska Division of Insurance, shall be the sole and final judge as to the adequacy of any form of insurance coverage.



**CITY OF WASILLA
PROCUREMENT SERVICES JUSTIFICATION
FOR
SOLE SOURCE PURCHASE OF GOODS AND SERVICES**

Goods or Services: Contract Negotiation Services 03/01/2008
Date

Department Account Number and Requisition Number for Item(s) Processed through Purchasing Officer: 001.4310.431.30.34

If recommending an award of a contract under WMC 5.08.100.B.3 through B.8, this document must be completed for all sole source purchases of goods or services. This and any other documentation **plus a departmental requisition** must be submitted for justification of sole source purchases and **must be approved in advance** of securing the goods and/or services.

All purchases over \$5,000 require the approval of the Requisitioner/Department Head and Purchasing Officer. These approvals cannot be delegated.

Information Related to the Purchase of the Goods or Services

Sole Source Request:			
Professional services per WMC 5.08.100.B3.	<input checked="" type="checkbox"/>		
Service Contract	<input type="checkbox"/>		
Good or commodity	<input type="checkbox"/>		
Prepared by:			
Name:	William A Miller		
Email address:	Wmiller@ci.wasilla.ak.us		
Phone No:	373-9047		
Department Name and Account Number and Requisition Number:			
Name:	Marvin Yoder		
Number:	373-9032		
Proposed Contractor or Vendor:			
Name:	Geariety Law Offices		
Address (Street):	1500A E College Way # 549		
Address (City, State, and Zip Code):	Mt Vernon, WA 98273		
Maximum Cost:	\$100,000		
Start Date: (for services only)	03/11/2008	Ending Date (for services only):	03/31/2009

Justification for Sole Source Purchases

1. Describe the goods or service to be acquired.
Services of a union contract negotiator
2. Name of the Contractor or Vendor.
Gearity Law Offices
3. Explain why the goods or services should be acquired.
Local 302 of the International Union of Operating Engineers has requested the negotiation of a labor contract
4. Explain why the goods or services must be provided by this particular source.
This source was recommended by the city legal counsel and has the capability to meet the time guidelines recommended by the local 302.
5. Provide evidence that the proposed contractor has experience in providing the goods or services and the length of time the contractor has provided the goods or services.
The contractor has provided these services for 25 years in Alaska. The contractor is currently providing these services for the City of Sitka, Alaska and has six years of experience as a labor relations manager for State of Alaska. In addition, the contractor has three and one-half years of experience as a union business agent for Alaska Public Employees Association (state employee union) and is licensed to practice law in Washington State and Alaska .
6. Provide previous purchase history (last 12 months) for these products or services from this source and the procurement method (ex. Competitive, non-competitive, etc.) used to acquire them.
This is the first negotiation. The city has not required these services in the past. Due to the complexity and volume of work required during the negotiations with local 302, the City believes it is in the taxpayers best interest to secure the services of an experienced professional.
7. Has the department ever purchased these same goods or services from this vendor?
 Yes No

If yes, what procurement method was used? (ex. Competitive, non-competitive, etc.)
8. If for services, was an effort made to use existing City employees to perform services?
 Yes No N/A
9. For contracts for services, provide a description of department's efforts to use existing employees and resources, or, in the alternative, to identify reasonable, competitive, procurement alternatives (rather than to use non-competitive negotiations).
There will be city employees involved, however the city does not have an experienced negotiator on staff.

10. There is only one product or service that can meet the specific needs **and** is the product or service only available from one source.

Yes No N/A

11. There is an urgent need or an emergency situation preventing competitive methods.

Yes No N/A

If yes, please explain: There is a limited supply of negotiators for management. Also, to prepare an RFP a solicit other service providers would take time to the detriment of the negotiating process.

12. The purchase is compatible or consistent with past acquisitions of products or services. (e.g., avoiding additional cost by changing the supplier of the product or service).

Yes No

13. The goods or services being supplied are being acquired under a contract for another governmental unit, such as a State or federal agency, or from another municipal government.

Yes No

14. The contract is for professional services without competition per WMC 5.08.100.B.6.

Yes No

15. A complete justification must be provided to explain why the City should acquire the goods or services through non-competitive procurement request rather than through a competitive process. (Note: Being the "only known" or "best" is not deemed adequate justification.)

This is a professional services contract. This contractor has a relationship with our current law firm, can move timely and not cause costly delays and is well qualified. A conversation with the Purchasing/Contracting Officer reveals that the process to secure a professional negotiator via competitive solicitation could take as long as seventy (70) days which would delay the negotiation process and potentially put the City in legal jeopardy with the State of Alaska Labor Relations Board.

Approvals

Manuel L. Yade

Requisitioner

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Date

Department Head

2/28/08

Date

William C. ...

Purchasing Officer

2-28-08

Date

Chloe ...

Finance Director

02/29/08

Date

Mayor

Date