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| | Approved | Denied |
| Date Action Taken: | 7/13/09 | |
| Other: | | |
| Verified by: | K Smiths | |

WASILLA CITY COUNCIL ACTION MEMORANDUM

AM No. 09-34

TITLE: AUTHORIZATION OF A THREE-YEAR CONTRACT FOR GENERAL COUNSEL LEGAL SERVICES TO DENALI LAW GROUP BEGINNING AUGUST 1, 2009, THROUGH JULY 31, 2012.

Agenda of: July 13, 2009

Date: June 30, 2009

Originator: K. Smithers, City Clerk and T. Tankersley, Finance Director

| Route to: | Department | Signature/Date |
|-----------|----------------------|---------------------------|
| X | Finance | <i>[Signature]</i> 7.2.09 |
| X | Deputy Administrator | <i>[Signature]</i> |
| X | City Clerk | <i>[Signature]</i> |

REVIEWED BY VERNE E. RUPRIGHT: *[Signature]*

FISCAL IMPACT: yes \$150,000 for FY-10 or no Funds Available yes no
 Account name/number: various: xxx-xxxx-xxx-30-32 (total for FY-10 = \$210,000)
 Attachments: proposed contract

SUMMARY STATEMENT:

On April 15, 2009, the City of Wasilla issued Request for Proposal number 001-2009/BY for general counsel legal services. Proposals were received and reviewed from four legal firms. Based on a review of the proposals and the interview, the City Council awarded the contract to Denali Law Group. Administration is recommending a three year contract be awarded to Denali Law Group.

STAFF RECOMMENDED ACTION: Council is requested to authorize a three-year contract for general counsel legal services to Denali Law Group beginning August 1, 2009. The continuation of the new Contract beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Wasilla City Council. The City may terminate this Contract, and Denali Law Group waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the funding from City, State, and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

Contract for Professional Legal Services

In consideration of the mutual promises herein, the CITY OF WASILLA and DENALI LAW GROUP, PC, an Alaska professional limited liability corporation (“Contractor”) agrees 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 firm 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 firm 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 firm by ordinance or by direction of the council and/or mayor.
- B. The firm shall represent the City as attorney in civil and criminal proceedings affecting the City; however, the City Council may hire independent counsel when in its judgment independent counsel is needed. The firm 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 Firm 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 Firm 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, Alaska Statute 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.
- F. The firm shall not engage any consultant, expert, or service without the prior approval of the mayor or council.
- G. Provide toll-free telephone access to the City.
- H. The firm 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 \$2000.

Section 3. Access to Municipal Personnel.

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

Section 4. Contract Administrator.

The City shall:

- A. Receive all information and notices the firm 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 on August 1, 2009 and shall continue for until July 31, 2012. The contract may be renewed for three additional years, with one-year extensions at the City Council's option.
- B. For purpose of assigned case completion this contract may be extended upon mutual consent.

Section 6. Compensation

- A. The firm shall be compensated at the hourly rates as fixed by agreement of the parties, as per 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 firm will also be reimbursed for other appropriate costs incurred to perform under this contract.
- B. The firm shall be entitled to no compensation under this contract beyond the scope of the City's express obligations. The City understands that instances may arise that require additional services. During these times the firm 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 firm shall have paid all municipal taxes currently due and owing by the firm.

Section 7. Payment and Reporting.

- A. The firm shall submit itemized monthly billings to the City Clerk for payment of all fees and costs for which the firm 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 firm 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 firm within 30 days.

Section 8. Termination of the Firm's Services

The firm's services may be terminated by either party with 30 days notice.

Section 9. Duties Upon Termination.

- A. If the firm's services are terminated for the convenience of the City or by mutual consent of the parties, the firm will be paid as provided for under Section 6. All finished and unfinished documents, work product, and materials prepared by the firm remain the property of the City.

- B. If the firm's services are terminated, the City shall pay the firm the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by the City. 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 firm under this contract shall become the property of the City.
- C. The firm shall not be entitled to any compensation under this section until the firm has delivered to the city clerk all documents, records, work product, and materials relating to this contract.
- D. If the firm's services are terminated, the firm 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 firm'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 firm 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 firm pursuant to this contract.

Section 11. Assignments.

Unless otherwise permitted by the city, any assignment by the firm 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 firm 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 firm agrees to discuss matters and reveal documents relating to this contract only with the City Council and Mayor, 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 firm 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: Purchasing Officer
290 E. Herning Avenue
Wasilla, AK 99654
FAX: (907) 373-9011

Firm: Denali Law Group
Attention: Richard Payne
344 N Main Street
Wasilla, AK 99654
FAX: (907) 357-5296

Section 14. Conflict of Interest.

The firm may not represent or assist private or public clients in connection with other claims, litigation, or other legal matters where such representation would constitute an actual conflict of interest. In particular, the firm 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 firm 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 Mayor or City Council has been first obtained.

Part II General Contract Provisions

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

- A. The firm 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 firm 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 firm agrees to post in

conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. The firm shall state, in all solicitations or advertisements for employees to work on contact 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 firm shall comply with any and all reporting requirements that may apply to it which the City of Wasilla may establish.
- D. The firm 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 independent counsel or firm of the firm under this contract.

Section 3. Permits, Laws and Taxes.

The firm 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 firm under this contract shall comply with all applicable law to include without limitation, statutes, ordinances, rules and regulations. The firm 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 firm.
- 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 Denali Law Group, Richard Payne
- 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 rising 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 deemed 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 firm shall maintain in good standing the insurance described in Subsection B of this section. Before rendering any services under this contract, the firm shall furnish the Purchasing Officer with proof of insurance in accordance with Subsection B of this section in a form acceptable to the mayor or city clerk.

- B. The firm 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 (30) day notice of cancellation clause.
 - 1. *Workers' Compensation*
\$100,000 Employer's Liability and Workers' Compensation as required by Alaska State Workers' Compensation Statutes.

 - 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 firm shall provide proof of such insurance during the contract period and proof of such endorsement after the end of the contract. The firm's carrier must agree to notify the City thirty (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 firm 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 firm 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 firm is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the firm 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 firm 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 firm 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

Verne E. Rupright, Mayor

ATTEST:

Kristie Smithers, MMC, City Clerk

Firm

DENALI LAW GROUP, P.C.
Richard K. Payne
Partner

Date: _____

IRS Tax No. _____

State of Alaska
Third Judicial District

Subscribed and sworn to before me on _____.

Notary Public

My Commission Expires

**CONTRACT FOR PROFESSIONAL LEGAL SERVICES
ATTACHMENT A
FEE SCHEDULE**

Contractor will charge for professional services to the city in accordance with the following schedule of hourly rates:

| | |
|------------------------|-------------------|
| Partners/Members: | \$170.00 per hour |
| Paralegals/Law Clerks: | \$ 85.00 per hour |

For out-of-pocket expenses incurred in the course of representation, Contractor will charge the actual cost. Such expenses include long distance telephone charges, expedited mail or courier service, filing and recording fees, deposition expenses, transcribing costs, expert witness fees, investigation fees, if necessary, computerized research fees, travel expenses, or any other reasonable fees related to attorney's services. Certain in-house expenses, such as photocopying and messenger service, are billed at standard rates. Contractor does not bill for secretarial time or word processing services.

The Contractor will not charge for travel costs, unless, it is necessary to travel outside the Matanuska-Susitna Borough.

If travel outside the Matanuska-Susitna Borough is required, and previously authorized by the Mayor or the City Council, then travel costs will be \$50 per hour and mileage will be calculated using the annual and most current mileage rate for the State of Alaska.

Contractor shall be required to attend all regular City Council meetings. Regular City Council meetings are held on the second and fourth Monday of each month. Attendance at special meetings and work sessions will be required if requested and notified by the City Clerk or Mayor which may include teleconferencing.

There will be no travel costs to attend meetings in the Matanuska-Susitna Borough.