



<i>Presented</i>	
Date Action Taken:	Approved <i>7/13/09</i>
Other:	
Verified by: <i>RBnits</i>	

**WASILLA CITY COUNCIL INFORMATIONAL MEMORANDUM**

**IM No. 09-13**

**TITLE: A CONTRACT WITH ORLANDO J. CABRERA, WITH THE FIRM OF NIXON PEABODY, TO PREPARE AND SUBMIT A GRANT APPLICATION FOR NSP LL STIMULUS FUNDS FROM THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ON BEHALF OF THE CITY OF WASILLA.**

**Agenda of:** July 13, 2009

**Date:** June 30, 2009

**Originator:** Marvin Yoder, Interim Deputy Administrator

Route to:	Department	Signature/Date
	Chief of Police	
	Recreational and Cultural Services Manager	
X	Director of Public Works	<i>[Signature]</i> 7/7/09
X	Director of Finance	<i>[Signature]</i> 7-2-09
X	Deputy Administrator	<i>[Signature]</i>
X	City Clerk	<i>[Signature]</i>

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

**FISCAL IMPACT:**  yes \$20,000 or  no Funds Available  yes  no

**Account name/number:** 001-4134-414.30-34

**Attachments:** Service Agreement (6 pp)

**SUMMARY STATEMENT:** IM No. 09-13 is intended to notify the City Council of a contract with Orlando J. Cabera to prepare and submit a grant application to the US Housing and Urban Development (HUD) Department to secure up to \$15 million in funding for a new library and other downtown improvements. There are three Nixon Peabody employees who will be working on this project, each with a different hourly rate. We estimate the total hours will be approximately 40 hours. Most hours will be billed at \$365/hour. This contract will be limited to \$20,000 under the Mayor's authority. A second part of this contract is being presented under AM 09-36 for lobbying and government assistance to follow up with the grant submission.

401 Ninth Street, N.W.  
Washington, DC 20004  
(202) 585-8000  
Fax: (202) 585-8080

Orlando J. Cabrera  
Direct Dial: (202) 585-8294  
E-Mail: ocabrera@nixonpeabody.com

June 26, 2009

*REVISED*

Mayor Verne E. Rupright  
Office of the Mayor  
City of Wasilla  
290 E. Herning Ave.  
Wasilla, AK 99654-7091

RE: Engagement for Legal Services

Dear Mayor Rupright:

This letter will confirm that the City of Wasilla, Alaska (the "City") has engaged Nixon Peabody LLP ("NP") to represent the City in connection with certain matters relating to its efforts to obtain funding from the U.S. Department of Housing and Urban Development ("HUD"). NP will prepare and submit an application to HUD for NSP II grant funds on behalf of the City.

1. Scope of Services

The services to be rendered by NP include representation of the City in connection with any related civil, administrative, or other proceeding that may result. We are not representing any individuals in this matter and should the interests of any officials, employees or contractors of the City diverge from the interests of the City in this matter, such individuals would need to obtain separate counsel.

Our intent is to staff this matter with one of our partners, the undersigned, taking the lead on handling all aspects of communications with HUD as directed by the City. One of our associates, Eliot Reid, will be working with me on this matter. From time to time, as the needs of the matter require, we may assign other attorneys, paralegals or technical personnel to assist with specific aspects of the case.

2. Billing for Fees and Expenses

Our fees will be billed monthly based on the hourly rates of particular attorneys (or other personnel) performing the services. My standard billable rate is \$690 per hour, however, we will undertake the matter on a reduced blended rate. Our partners and of counsel attorneys (including the undersigned) will bill \$550 per hour (“Blended Partners Hourly Rate”) while our associates will bill their regular rate. Eliot Reid’s billing rate is \$365 per hour. The range of hourly rates for associates, depending on their experience level, is from \$250 hourly and higher, however if any associate’s billing rate exceeds the rate quoted herein for our partners and of counsel attorneys, the City will be charged no more than the Blended Partners Hourly Rate for that associate’s time. Legal assistants or technical professionals rates range from \$135 to \$260 per hour. These billing rates are subject to change from time to time and are customarily adjusted at the beginning of each new calendar year.

The fees discussed above do not include charges and disbursements which will be billed in addition to billings for our legal services. Charges would include, for example, long distance telephone charges, copying costs, facsimile charges, express mailing charges, delivery charges, filing fees.


In order to commence representation of the City in this matter, we would require a \$5,000 retainer. Commencing next month, our firm will send bills to the City on a monthly basis for payment of legal fees and expenses. We will also provide summary statements of the services rendered.

Please review this agreement, and if you have any questions do not hesitate to contact me at (202) 585-8294. If these terms meet with your approval, please sign one copy and send it back to us, together with your check representing a retainer of \$5,000, which we will hold pending our receipt of your execution copy of this letter and completion of our internal conflict search. This retainer will be applied against fees and disbursements as incurred and, to the extent that the retainer balance is a reduced as a result, the City agrees to restore the retainer to the full original amount upon request of NP.

Mayor Verne E. Rupright  
June 26, 2009  
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We hope the foregoing is satisfactory. Of course, please feel free to call me with any questions.

Sincerely,

  
Orlando J. Cabrera

THE ABOVE AGREEMENT IS  
ACCEPTED AND AGREED TO:

**CITY OF WASILLA**

By: 

Title:

## STANDARD TERMS AND CONDITIONS OF ENGAGEMENT

1. **Fees:** We take into account many factors in billing for services rendered. The principal factor is our schedule of hourly rates, and most statements for services are the product of the time worked (in units of tenths of an hour) multiplied by the hourly rates for the attorneys and legal assistants who did the work. The client will be billed for all time spent on its behalf, including without limitation conferences, telephone calls, drafting, research, and travel.

It is impossible to determine in advance how much time will be needed, since that depends on many things beyond our control. Any figures we may give the client for the cost of all or part of our engagement are merely estimates.

Our fees will be billed monthly based on the hourly rates of particular attorneys (or other personnel) performing the services. We will undertake the matter on a reduced blended rate. Our partners and of counsel attorneys (including the undersigned) will bill \$550 per hour ("Blended Partners Hourly Rate") while our associates will bill their regular rate. The range of hourly rates for associates, depending on their experience level, is from \$250 hourly and higher, however if any associate's billing rate exceeds the rate quoted herein for our partners and of counsel attorneys, the City will be charged no more than the Blended Partners Hourly Rate for that associate's time. Legal assistants or technical professionals rates range from \$135 to \$260 per hour. These billing rates are subject to change from time to time and are customarily adjusted at the beginning of each new calendar year. We reconsider our schedule of hourly rates annually, and may revise them at that time. Upon request, we will provide a client with the rates of those professional staff working on an engagement.

Please remember that Federal rules prohibit paying legal fees and costs from project operating income or otherwise encumbered assets unless such legal services directly benefit the project.

2. **Costs:** It is usually necessary for us to incur, as agent for our clients, expenses for items such as filing fees, travel, lodging, meals, toll telephone calls, photocopying, facsimiles ("fax"), and courier services. Many engagements require substantial amounts of costly ancillary services such as outside duplication services and computerized legal research. The client is responsible for all costs incurred on the client's behalf. In order to allocate these expenses fairly and to keep our hourly rates as low as possible for those matters that do not involve such expenditures, these items are separately itemized on our statements as "costs advanced" or "disbursements."

We will not advance major out-of-pocket expenses, including outside fees and expenses (such as printing costs, filing fees, etc.), unless special arrangements are made in advance. They will be billed directly or forwarded to our client.

3. **Billing:** Fees and expenses will be invoiced monthly.

4. **Late Payments:** We are confident that our clients make every effort to pay us promptly. Occasionally, however, a client has difficulty in making timely payment. To avoid burdening those clients who pay their statements promptly with higher fees reflecting the added costs we incur as a result of clients who are delinquent, we reserve the right to impose an interest/service charge of one percent per month for late payments. In no event will the service charge be greater than permitted by applicable law.

5. **Non-Payment of Fees and Costs:** Failure to pay any statement rendered when due will constitute a default. In the event of a default, the client agrees that in our discretion we may immediately cease all legal services on its behalf or discontinue our representation (subject to our ethical obligations and any other applicable provision of law).

In the unlikely event that we are required to institute legal proceedings to collect fees and costs owed by the client, the prevailing party will be entitled to reimbursement of its reasonable attorneys' fees and other costs of collection. In connection with any such proceeding, the client and we agree that it may be brought in the United States District Court for the District of Columbia, and the client and we consent to venue and personal jurisdiction in those courts.

6. **Termination:** Our client has the right to terminate our representation by written notice at any time. In that case, the client is not relieved of the obligation to pay for all services rendered and costs incurred on its behalf prior to receipt of such notice. We have the same right to terminate our engagement, subject to an obligation to give the client reasonable notice to arrange alternative representation.

In the event that we have devoted no time to this matter for any three consecutive months, then we shall assume that the engagement has terminated as of the last date on which we performed services related thereto.

In the event that our representation is terminated, the client agrees to pay all bills thereafter rendered covering the period prior to the termination.

7. **Contacts/Conflicts:**

A. **Contacts.** We will communicate with you or your designee as our point of contact. This representation may include serving as counsel for several affiliated parties, and in such event, we agree to communicate with any party that seeks separate consultation. Representing multiple parties, even if only nominally independent, may raise the potential for conflicts of interest. If such a conflict does arise, each such party should consult independent legal counsel, even if such parties agree to waive conflicts.

B. **Conflicts; Waivers:** You have not revealed to us any information which would indicate any conflict between any of our existing clients and you or any of your affiliates, or among you and your affiliates. It is possible, however, that in the future a present or future client of ours will have a dispute with you or one of your affiliates while we are representing you

or a conflict will arise among you and your affiliates. Therefore, you have agreed that we may continue to represent or may undertake in the future to represent an existing or new client in any matter that is not substantially related to our work for you, even if the interests of such client in those other matters are directly adverse to you or to your affiliates. We agree, however, that your prospective consent to conflicting representation reflected above shall not apply in any instance where, as the result of our representation of you, we have obtained sensitive, proprietary or other confidential information that, if known to such other client of ours, could be used in such other matter by such client to your material disadvantage. Moreover, as a matter of professional responsibility, we would not undertake such representation adverse to you or your affiliates unless we were satisfied that it would not impair our ability to continue to represent the client in this matter. Any client would, of course, always be free to terminate us as counsel at any time if that client believes it to be in its best interests.

C. **Multiple Representation:** Because we will be representing multiple, affiliated parties in this matter, each client recognizes that there can be no confidences between or among you as a group. Thus, we can and probably will disclose to the others whom we represent in this matter what is told to us by any other member of the group. In other words, if we receive information from or about one of you that we believe the others should have in order to make decisions regarding the subject of our representation, we will give them that information.

To comply with our professional obligations, our representation of you is subject to clearance of any conflicts of interest with present or former clients of our firm. Please provide us with the names of any relevant affiliated parties or other parties you would like us to represent, which will expedite our internal conflicts search.

8. **Applicable Law:** The laws of the District of Columbia will govern the interpretation of this agreement, including all rules or codes of ethics which apply to the provision of services by us.

9. **Payment by Others:** Sometimes another party to a transaction agrees to pay our client's legal fees, or a court may order our client's adversary to pay all or a part of its legal fees and costs. However, in such case our client remains primarily liable for payment of all fees and costs. Any amounts received from others will be credited to the client's account.