

MUNICIPALITY OF ANCHORAGE



Assembly Memorandum

No. AM XXX-2021

Meeting Date: October 12, 2021

1 **From: ASSEMBLY CHAIR LAFRANCE**

2
3 **Subject: CONTRACT FOR PROFESSIONAL LEGAL SERVICES WITH**
4 **BIRCH HORTON BITTNER & CHEROT NOT TO EXCEED FIFTY**
5 **THOUSAND DOLLARS (\$50,000) TO PROVIDE LEGAL**
6 **COUNSEL TO THE ASSEMBLY RELATED TO SEPARATION OF**
7 **POWERS ISSUES.**
8

9 The Anchorage Assembly leadership chooses to enter into a contract with the law
10 firm of Birch Horton Bittner & Cherot (BHBC) to assist with an increased legal
11 services workload related to separation of powers issues arising in multiple
12 contexts as the new Mayor's Administration organizes and implements operations,
13 administrative and policy changes. Members of the Administration have
14 exacerbated some disputes over legislative and executive branch functions and
15 authority. BHBC has a legal team with expertise and experience in government
16 and municipal law as well as with the Municipality of Anchorage.
17

18 The amount of the contract for the remainder of 2021 is not to exceed \$50,000 and
19 is billed on an as-provided basis. Legal counsel within the scope of the contract
20 will be provided on an as-needed basis. Charter § 4.06 provides the Anchorage
21 Assembly may engage legal counsel as required in the execution of its legislative
22 functions, and legal services procurement for the Assembly is governed by
23 Anchorage Municipal Code section 7.20.060K. Assembly Counsel used a
24 competitive procurement process under AMC section 7.20.070 described in the
25 attached Memorandum. It is recommended the Assembly approve this contract
26 with BHBC.
27

28 Approval is conditioned on receiving fund certification, which has been requested.
29

30 Prepared by: Dean T. Gates, Assembly Counsel
31 Reviewed by: Desirea C. Camacho, Assembly Budget Analyst
32 Barbara A. Jones, Municipal Clerk
33 Fund certification: Requested
34 Travis Frisk, CFO
35 101000-101500-540640 FY2021 \$50,000.00
36 (Operating Budget)

37 Respectfully submitted: Suzanne LaFrance, Assembly Chair
38 Legislative Branch



**MUNICIPALITY OF ANCHORAGE
OFFICE OF ASSEMBLY COUNSEL
MEMORANDUM**

To: Anchorage Assembly
Through: Suzanne LaFrance, Assembly Chair
From: Dean T. Gates, Assembly Counsel *DTG*
Date: October 8, 2021
Subject: Procurement of Legal Services – Separation of Powers issues

The Bronson Administration has implemented and conducted administrative, operations and organizational changes that implicate separation of powers issues as the Assembly executes its legislative functions and is impeded or interfered with by those changes. As examples: the attempts by Assembly leadership to implement an updated Covid-19 Mitigation Plan for Assembly Chambers were prevented at the instruction of Administration and executive branch staff asserting control over the Loussac Library grounds; and two ordinances introduced and awaiting action address respective functions and powers of the legislative and executive branches of the Municipality and may be challenged: AO 2021-90/-90(S) and AO 2020-92/-92(S). It is anticipated there will be more conflicts and disputes between the legislative and executive branch over their respective functions and authority and implicate the separation of powers doctrine. Assembly Counsel advises engaging with outside legal counsel for advice, legal services, and the potential of litigation for these complex matters and the amount of work necessary to sufficiently and adequately advise and support the Assembly in these disputes. Under AMC sections 7.20.060K., Counsel conducted informal solicitation in the open market per AMC section 7.20.070 and reports the results here.

Four local law firms with expertise in municipal law and attorneys with stellar reputations in multiple aspects of local government legal issues in Alaska were identified and contacted.

- **Dorsey & Whitney LLP.** Attorneys proposed to work under this engagement are partner Joan Travostino and LouAnn Cutler, at hourly rates of \$490 per hour and \$480 per hour respectively, with a possible rate discount pending. There were no known conflicts. Both attorneys have over 25 years of experience representing a combined over 20 municipalities in the State of Alaska in various projects, including in school funding, constitutional issues, and advising on separation of powers.
- **Chandler, Falconer, Munson & Cacciola, LLP.** Discussion with Brooks Chandler, Partner, reveals there are multiple possible conflicts with engaging for this matter, so this firm was not considered further.
- **Birch Horton Bittner & Cherot.** Discussed possible engagement with William Falsey whom would be the primary attorney, and Holly Wells a partner whom would oversee the work. Both have extensive municipal law experience and Mr. Falsey was the MOA's Municipal Attorney and Municipal Manager, giving this firm particular expertise for the nuances of the MOA relevant law and executive/legislative structure, hierarchy, and operational particulars. The hourly rates for attorneys will be \$350 per hour (a

discounted rate) and for paralegals \$175 per hour. In a conflicts check, the firm does represent some clients with licensing, permitting, or land use matters that come before the Assembly, but the scope of representation for this engagement will exclude representation of the Anchorage Assembly in any such matters.

- **Levesque Law Group, LLC.** Joe Levesque is the principal attorney and has represented the Municipality and Anchorage Assembly in the past as the decision-making body in a special assessment levy appeal issue, and on appeal to the Superior Court. Mr. Levesque has extensive experience in advising and representing municipal governments across Alaska, in a variety of legal issues including redistricting appeals, employment law, taxes, contracts, elections and land use. The rate would be \$220 per hour for Mr. Levesque's work, \$185 per hour for an Associate attorney; \$125 per hour for law clerk, and \$85 per hour for the secretary's time. The firm usually advises the municipal government as a whole on separation of powers issues, rather than one branch of the government. There were no known conflicts with this matter, the firm does not currently represent any part adverse to the MOA.

Based on my knowledge of the attorneys involved and their work, the discussions with them, rates, availability for the requested work, nature and complexity of the scope of work, Assembly Counsel recommends retention of Birch Horton Bittner and Cherot to the Assembly Chair, and she may forward her selection to the Assembly. I recommend a limit on the contract to not exceed \$50,000 for the remainder of 2021.