

**City of Palmer
Action Memorandum No. 15-087**

Subject: Authorize the City Manager to Execute an Extension of the Agreement for Legal Services with Wohlforth, Brecht & Cartledge, A.P.C. for an additional year, as Authorized by such Agreement, and Authorize the City Manager to execute a Novation Agreement assigning the Agreement for Legal Services (as extended) to Jermain Dunnagan & Owens, P.C. for the Remainder of its Term

Agenda of: October 27, 2015

Council Action: Authorized _____

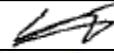
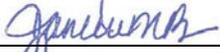
Originator Information:

Originator: Mayor Johnson – via City Clerk
Date: September 2, 2015 **Requested agenda date:** October 27, 2015

Department Information √:

Route to:	Department Director:	Signature:	Date:
_____	Community Development	_____	_____
_____	Finance	_____	_____
_____	Public Safety	_____	_____
_____	Public Works	_____	_____

Approved for presentation by:

	Signature:	Remarks:
City Manager		_____
City Attorney		_____
City Clerk		_____

Certification of Funds:

Total amount of funds listed in this legislation: \$ _____

This legislation (√):

- Has no fiscal impact Creates a positive impact in the amount of: \$ _____
 Creates a negative impact in the amount of: \$ _____

Funds are (√):

- Budgeted Line item(s): _____ Within various line items
 Not budgeted Affected line item(s): _____

General fund unassigned balance (after requested budget modification): \$ _____

Enterprise unrestricted net position (after requested budget modification): \$ _____

Director of Finance Signature: 

Summary statement: On December 14, 2011, the City Council authorized an Agreement for Legal Services with Wohlforth, Brecht & Cartledge, A.P.C. The initial contract term was two

years with three one-year options for renewal, with mutual agreement of the parties. Action Memorandum 15-087 authorizes the third one-year extension of the contract. It also authorizes the City Manager to sign a Novation Agreement assigning the contract to the law firm of Jermain Dunnagan & Owens, P.C., effective December 1, 2015. The Council is requested to approve the Novation Agreement, since after 50 years of service to the state of Alaska, the law firm of Wohlforth, Brecht & Cartledge, A.P.C. is concluding its operations and most of its attorneys are relocating their practices to Jermain Dunnagan & Owens, P.C. on or about December 1, 2015. Mr. Gatti, who has represented the City since 2006, will remain your primary contact for legal services to the City of Palmer.

Administration recommendation: Authorize action memorandum 15-087.

NOVATION AGREEMENT
TO
JANUARY 1, 2012 LEGAL SERVICES AGREEMENT
WITH WOHLFORTH, BRECHT & CARTLEDGE, A.P.C.

1. As of the effective date provided below, Wohlforth, Brecht & Cartledge, A.P.C. ("Assignor") hereby assigns all Assignor's rights and obligations set forth in the January 1, 2012 legal services agreement ("Agreement") by and between Assignor and the City of Palmer, Alaska ("City"), to the law firm of Jermain Dunnagan & Owens, P.C. ("Assignee"). A copy of the January 1, 2012 Agreement is attached as Exhibit A.
2. As of the effective date provided below, Assignee hereby accepts the assignment from Assignor and agrees to perform all of Assignor's obligations under the Agreement according to its terms.
3. The City hereby consents to the assignment provided for in this Novation Agreement.
4. This Novation Agreement shall be effective as of December 1, 2015. Assignor shall remain responsible for all of Assignor's obligations under the Agreement until the effective date.
5. Except as modified by this Novation Agreement, all terms and conditions of the Agreement remain unchanged.

Date: _____

CITY OF PALMER, ALASKA

[Name], City Manager

Date: _____

ASSIGNEE

Mark P. Melchert, Managing Shareholder

Date: _____

ASSIGNOR

Julius J. Brecht, Managing Shareholder

RECEIVED
JAN 12 2012
Wohlforth, Brecht, Cartledge
& Brooking

PROFESSIONAL SERVICES AGREEMENT

THIS Agreement made and entered into this 1st day of January, 2012, by and between the City of Palmer, an Alaska municipal corporation (the City), and Wohlforth, Brecht, Cartledge & Brooking (Consultant

Section 1. Employment of Consultant, The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereafter set forth.

Section 2. Consultant's Representation and Warranty, and Manner of Performance.

- (A) Consultant hereby represents and warrants to the City, and the City relies upon said representations and warranties, that Consultant is a professional in the subject area in which services are to be provided and that Consultant has more than adequate experience, skill, knowledge, and competence to perform the services set forth in this Agreement.
- (C) Consultant accepts the relationship of trust and confidence between it and the City. Consultant covenants to perform its services under this Agreement with due diligence, due care, and in a good and professional manner.

Section 3. Scope of Services.

- (A) Serve as the legal advisor of and be responsible to the city council, and advise the city manager and city clerk concerning matters affecting city administration, as well as perform other duties as may be prescribed by the city council.
- (B) Prepare legal documents such as ordinances, resolutions, contracts, conveyances, etc., and legal opinions as needed. Provide limited representation in court, negotiate on the city's behalf and handle other legal matters that may arise.
- (C) Be readily available for consultation by the city council, city manager, city clerk and city staff.
- (D) Draft opinion letters regarding, among other subjects, the interpretation of the city code and charter, state and federal laws, and policies.
- (E) Perform other such duties as may be prescribed for the city attorney by ordinance or by direction of the city council and/or city manager.
- (F) Must work effectively with the city council, city manager, and city staff, and also with other public agencies with which the city has legal relations.
- (G) The city attorney is expected to attend at least two city council meetings per month.

Section 4. Personnel.

Consultant's personnel shall be limited to Consultant employees and those persons

approved by the City Manager.

Section 5. Time of Performance.

The term of the professional services agreement is two years, with three one-year options unilaterally available to the city. The agreement may be terminated at the convenience of the City at any time. The services of the Consultant shall commence upon execution of this contract by the City and shall terminate, subject to Sections 8 and 9, on January 1, 2014. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 6. Compensation.

- (A) Subject to the provisions of this Agreement, the City shall pay the Consultant a total sum for all services and expenses for the term of this Agreement in accordance with the following provisions:
 - (1) Hourly cost for services to be provided: Shareholder attorneys: \$190.00/hour; Associate attorneys \$170.00/hour; and Paralegals \$85.00/hour
 - (2) No travel time shall be charged for round trip travel to Palmer for city meetings.
 - (3) Total annual cost to the City for 600 hours of legal services plus attendance at twenty-four-four-hour council meetings and six two hour consultation meetings at City Hall (This cost and hours shall be an approximation. Actual cost and hours shall be based on need): \$134,520
- (B) Consultant may increase its hourly fee \$5.00 per hour for each one-year extension unilaterally granted by the City under provisions of Section 5 of this Agreement.
- (C) Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of his duties under this Agreement. The parties understand and agree that, except as otherwise provided in this section, administrative overhead and other indirect or direct costs the Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.

Section 7. Method and Time of Payment.

- (A) The City will compensate the Consultant in accordance with Section 6 which compensation shall constitute the full and complete compensation for the Consultant's services and performance under this Agreement. Payments will be made on receipt of billings submitted pursuant to the schedule set forth in Section 6. A billing is a summary of expenditures to a date by line descriptive categories. Documentation of expenditures need not be submitted with billings but must be retained by the Consultant in the event the City requests said documentation.

- (B) No payment will be disbursed until approved by the City. The City Manager shall review Consultant's billings in a timely manner, and request from the Consultant necessary explanations or additional documentation within fifteen (15) days of receipt of billing by the City.

Section 8. Termination of Agreement for Cause.

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. All finished or unfinished documents, data, studies, surveys and reports or other material (to include without limitation data and information kept on computer, disk, video, tape, etc.) prepared by the Consultant arising out of or connected with this Agreement are the property of the City and shall be delivered to the City by or upon the effective date of termination. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Section 6 of this Agreement only for work completed to the City's satisfaction in accordance with Section 6 of this Agreement and the other terms of this Agreement.

Section 9. Termination for Convenience of City.

The City may terminate this Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date of such termination. All finished or unfinished documents and other materials as described in paragraph 8 above are the property of the City and shall be delivered to the City by or upon the effective date of execution of this section. The Consultant shall be entitled to receive compensation in accordance with the payment provisions of Section 6 of this Agreement only for work completed to the City's satisfaction in accordance with Section 6 of this Agreement and the other terms of this Agreement. If this Agreement is terminated due to the fault of the Consultant, section 8 of this Agreement shall govern the rights and liabilities of the parties.

Section 10. Causes Beyond Control.

In the event the Consultant is prevented by a cause or causes beyond control of the Consultant from performing any obligation of this Agreement, non-performance resulting from such cause or causes shall not be deemed to be a breach of this Agreement which will render the Consultant liable for damages or give rights to the cancellation of the Agreement for cause, provided that Consultant duly and timely notifies the City in writing of the cause or causes, which writing must be titled "Cause or Causes Beyond Control of Consultant." However, if and when such cause or causes cease to prevent performance, the Consultant shall exercise all reasonable diligence to resume and complete performance of the obligation with the least possible delay. The phrase "cause or causes beyond control," as used in this section, means anyone or more of the following causes which are not attributable to the fault or negligence of the Consultant and which prevent the performance of the Consultant: fire, explosions, acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent the Consultant from performing the terms of the Agreement as

set forth herein.

Events which are peculiar to the Consultant and would not prevent another Consultant from performing, including, but not limited to financial difficulties, are not causes beyond the control of the Consultant. Based on Consultant's "Cause or Causes Beyond Control of Consultant," the City will determine whether the event preventing the Consultant from performing is a cause beyond the Consultant's control.

Section 11. Modifications.

- (A) The parties may mutually agree to modify the terms of the Agreement only by means of an agreement in writing signed by both parties. Modifications to the Agreement shall be incorporated into the Agreement by written amendments.
- (B) It is expressly understood that the City may require changes in the scope of services and an unreasonable refusal by the Consultant to agree to modification in the scope of services will be the basis for termination of the Agreement for cause. It is expressly understood that the total amount of compensation for successful performance of the Agreement will not be modified, under any circumstances, without prior written approval of the City. The above notwithstanding, if a change in the scope of services significantly changes the amount of work required of Consultant or requires services Consultant is not qualified to perform so that it would not be reasonable for Consultant to perform all the work or provide the qualified personnel for less than the not-to-exceed amount set out in Section 6, then the City's failure to reasonably increase said not-to-exceed amount will excuse Consultant's refusal to agree to the modification in the scope of services.

Section 12 Equal Employment Opportunity.

The Consultant will not discriminate against any employee or applicant for employment in violation of law, to include without limitation, because of race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, physical disability, age, status as a disabled veteran, or veteran of the Vietnam era. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities.

The Consultant agrees to post in conspicuous places in its office available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical handicap, age, status as a disabled veteran, or veteran of the Vietnam era. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement.

Section 13. Interest of Members of City and Others.

No officer, member or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 14. Non-Assignability.

- (A) The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City, thereto; provided, however that claims for money due or to become due to the Consultant from the City under this Agreement may be assigned by court order or to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City, or the Consultant shall be responsible to the City for any moneys due the assignee of this Agreement which are paid directly to the Consultant.
- (B) The Consultant shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

Section 15. Interest of Consultant.

The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement it shall not knowingly employ any person having any such interest and that it shall reasonably inquire of all its employees to determine that they have no such interest.

Section 16. Findings Confidential

Except as required by law, including court orders directing disclosure, any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

Section 17. Officials Not to Benefit.

No members of the Congress of the United States and no resident commissioner shall be admitted to any share or part thereof or to any benefit to arise from this Agreement. No member of the legislature or officer of the state of Alaska or the City shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.

Section 18. Publication, Reproduction and Use of Materials.

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

Section 19. Audits and Inspections.

At any time during normal business hours and as often as the City may deem necessary, there shall be made available for examination all of Consultant's records with respect to all matters covered by this Agreement and Consultant will permit representatives of the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement. Except in case of emergency, Consultant must make such records available upon five (5) day's notice. In case of emergency, Consultant must make such records available immediately upon request. In performing such audits and investigations, the City and its representatives shall not unduly interfere with the ability of Consultant to perform its duties under this Agreement.

Section 20. Jurisdiction; Choice of Law.

Any civil action arising from this Agreement shall be brought in the superior court for the third judicial district of the state of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

Section 21. Non-Waiver.

The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City thereafter to enforce each and every provision hereof.

Section 22. Permits, Laws and Taxes.

The Consultant shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to the performance under this Agreement. In performing its obligations under this Agreement, Consultant shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 23. Relationship of the Parties.

The Consultant shall perform its obligations hereunder as an independent contractor of the City. The City may administer this Agreement and monitor the Consultant's compliance with this Agreement but shall not supervise or otherwise direct the Consultant except to provide recommendations and to provide approvals pursuant to this Agreement.

Section 24. Administration of this Agreement.

- (A) The City Manager or his designee will be the representative of the City administering this Agreement.
- (B) The services to be furnished by the Consultant shall be administered by the City Manager. In the event that Consultant is unable to serve for any reason to perform its obligations under this Agreement, the Consultant shall appoint a successor in interest but such appointment will be subject to a written approval of the City.

Section 25. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties. To the extent they are not inconsistent with the terms of this Agreement; the following documents are incorporated by reference into this Agreement as if fully set forth herein:

Section 26. City Held Harmless.

- (A) The Consultant shall indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-Consultant as a result of the Consultant's or any sub-Consultant's performance pursuant to this Agreement.
- (B) The Consultant shall not indemnify, defend, save and hold the City harmless from any lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of wrongful or negligent acts, errors or omissions solely of the City occurring during the course of or as a result of the performance of this Agreement.
- (C) Where lawsuits, actions, claims or liability, including reasonable attorney's fees and costs, arise out of wrongful or negligent acts of both the Consultant and the City occurring as a result of the performance of this Agreement, the Consultant shall indemnify, defend, save and hold the City harmless from only that portion of the lawsuit, action, claim or liability, including reasonable attorney's fees and costs, arising out of or related to any wrongful or negligent act, error or omission of the Consultant or any sub-Consultant as a result of the Consultant's or any sub-Consultant's performance pursuant to this Agreement.

Section 27. Interpretation and Enforcement.

This Agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this Agreement are not to be construed as limitations or definitions but are for identification purposes only.

Section 28. Consultant Insurance.

- (A) The Consultant will provide the City with a certificate of errors and omissions insurance from the Consultant's insurance company in an amount of \$1,000,000. The insurance shall remain in force through the term of this Agreement whether occurrence or claims-made and if claims made then for a minimum of three years after final payment to the Consultant by the City.
- (B) The Consultant will, at its own expense, secure and maintain and will file with the City the following proper and acceptable insurance coverage, including defense and indemnification of the City. The insurance coverage will be secured with an insurance company acceptable to the City.
- (1) Worker's Compensation Insurance in compliance with the laws of the state of Alaska, AS 23.30, et. seq., and federal jurisdiction where the work is being performed, will cover all employees engaged in the performance of the work specified in this Agreement. Employer's liability limits shall be: \$100,000 each accident; \$500,000 disease--policy limit; and \$100,000 disease--each employee.
- (2) Comprehensive General Liability or Commercial General Liability Coverage: Limit \$1,000,000 Bodily Injury and Property Damage, combined Single Limit. Coverage to include:
Premises Operation Products/Completed
Operations Independent Contractors
Blanket Contractual Broad Form Property
Damage Personal Injury with Exclusion "C" deleted
- (3) Comprehensive Automobile Liability: Limit \$1,000,000 Bodily Injury and Property Damage, Combined Single Limit. Coverage to include:
All Scheduled Vehicles
Hired Vehicles
Non-owned Vehicles
- (4) Unemployment Insurance by payment of employment security taxes for all employees hired by the Consultant to work on this project. In the event of the Consultant's failure to pay such taxes, the City will withhold an amount sufficient to pay such taxes from any payments owed to the Consultant by the City. The City also reserves the right to contact the Alaska State Department of Labor, in order to determine whether unemployment security taxes have been paid by the Consultant. The City further reserves the right to withhold that portion of employment security taxes owed to any employees pending notification of the Consultant's unemployment security tax clearance from the Alaska State Department of Labor.
- (C) A lapse in insurance coverage is a material breach of this Agreement, which shall result in immediate termination of the Agreement, pursuant to Section 8.
- (D) Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the City prior to cancellation. Each policy (other than for

worker's compensation) shall name the City as an additional insured. 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. Consultant's insurance coverage shall be primary to any coverage carried by the City, which may cover the work specified in this Agreement. Consultant's insurance carrier must be an admitted carrier in the State of Alaska or must be Best rated A+7 or better.

Section 29. Understanding.

The Consultant acknowledges that the Consultant has read and understands the terms of this Agreement, has had the opportunity to review the same with counsel of its choice, and is executing this Agreement of its own free will.

Section 30. Severability.

If any section or clause of this Agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Agreement shall remain in full force and effect.

Section 31.

Compliance with Law. Consultant shall comply with all applicable Federal, State of Alaska and City laws, regulations, and ordinances in performing its duties hereunder.

Section 32. Notices.

Any notice required pertaining to the subject matter of the Agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following address:

City: City Manager
City of Palmer
231 W. Evergreen Avenue
Palmer, Alaska 99645

Consultant: Wohlforth, Brecht, Cartledge & Brooking
900 W. 5th Avenue, Suite 600
Anchorage, Alaska 99501

CITY OF PALMER

CONSULTANT:

Wohlforth, Brecht, Cartledge, & Brooking



Douglas B. Griffin, City Manager



Michael R. Gatti, Shareholder Attorney