



CITY of NOVI CITY COUNCIL

**Agenda Item D
December 17, 2012**

SUBJECT: Approval of recommendation from Consultant Review Committee to award a contract for Prosecutorial Services to Gabe, Quinn & Seymour for a three-year term with two (2) one (1) year renewals.

SUBMITTING DEPARTMENT: Public Safety *dem*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION: *[Signature]*

In 2010, the Consultant Review Committee (CRC) recommended awarding a contract for prosecutorial services to Gabe, Quinn & Seymour through December 31, 2012 with an option to renew in 2013 to City Council after a competitive bidding process. Gabe, Quinn & Seymour were awarded the contract by City Council with two one year renewals beginning in 2013. With two new members to the CRC, who have had little to no exposure to the City's prosecuting attorney, and being the contract was up for renewal, the CRC decided to meet with the Gabe, Quinn & Seymour to learn more about the services they render and to discuss their contract. On, Tuesday, December 4, 2012 the Consultant Review Committee conducted a meeting with Gabe, Quinn & Seymour and their principal attorney, Phil Seymour. Mr. Seymour who served as Novi's primary Prosecuting Attorney over 20 years ago, again has taken that role as Mr. Charles Cooper has been appointed as a 52-1 District Court magistrate. Recognizing the years of successful delivery of service, the CRC recommended the City enter into a new agreement with Gabe, Quinn & Seymour for three years with two one year optional renewals.

Mr. Phil Seymour will continue to serve as the City's principal prosecuting attorney. The hourly rate of \$110 will remain in place through the life of this new contract.

RECOMMENDED ACTION: Approval of recommendation from Consultant Review Committee to award a contract for Prosecutorial Services to Gabe, Quinn & Seymour for a three-year term with two (2) one (1) year renewals.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

MEMORANDUM OF UNDERSTANDING RE: PROSECUTORIAL LEGAL SERVICES

The City of Novi, herein called "City," and Gabe, Quinn & Seymour, herein called "Attorneys", agree as follows:

1. The City Council of the City of Novi employs the Attorneys as special counsel to represent the City in the prosecution of ordinance and/or code violations of the City.
2. The Attorneys shall comply with the insurance provisions described in the attached Exhibit A - Insurance Requirements.
3. The Attorneys shall perform the services described in the attached Exhibit B - Scope of Services.
4. For the services described in Section 2 above, the Attorneys shall be paid as described in the attached Exhibit C – Fee proposal from the Attorneys dated November 24, 2010.
5. Fees for services as outlined above may be adjusted in accordance with revised schedules as may be approved by both parties in conjunction with adoption of the City's budget.
6. Philip H. Seymour shall be primarily responsible for the provision of the services listed, and he/she shall attest to the accuracy of all invoices submitted pursuant to this agreement. Attorneys agree that a sufficient number of attorneys shall be assigned to the City's work to assure timely delivery of services.
7. This Agreement shall continue and remain in effect for a period of three (3) years, with the option of two (2) one-year renewals through mutual consent, or until a notice of termination is earlier provided by either the City Council or the Attorneys. Either party may terminate this agreement at any time upon sixty (60) days written notice to the other for any reason. In the event of termination the parties agree to cooperate in the transition to successor legal counsel in conformance with State Bar of Michigan ethical guidelines to protect the public interests of the City.

IN WITNESS WHEREOF, the parties hereunto have executed this agreement on the date below stated.

CITY OF NOVI

By: _____
Robert Gatt, Mayor

By: _____
Maryanne Cornelius, City Clerk

Gabe, Quinn & Seymour

By: _____

Dated: _____

Exhibit A Insurance Requirements

1. The Attorneys shall maintain at its expense during the term of this Agreement, the following insurance:
 - a. **Worker's Compensation** insurance with the Michigan statutory limits and Employer's Liability insurance with minimum limits of **\$100,000** (One Hundred Thousand Dollars) each accident.
 - b. **Commercial General Liability Insurance** - The Attorneys shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance, Personal Injury, Bodily Injury and Property Damage on an "Occurrence Basis" with limits of liability not less than **\$3,000,000** (Three Million Dollars) per occurrence combined single limit.
 - c. **Automobile Liability** insurance covering all owned, hired and non-owned vehicles with Personal Protection insurance to comply with the provisions of the Michigan No Fault Insurance Law including Residual Liability insurance with minimum bodily injury limits of **\$3,000,000** (Three Million Dollars) each person and **\$3,000,000** (Three Million Dollars) each occurrence and/or aggregate minimum property damage limits of **\$3,000,000** (Three Million Dollars) each occurrence and/or aggregate.
 - d. The Attorneys shall provide proof of **Professional Liability** coverage in the amount of not less than **\$3,000,000** (Three Million Dollars) per occurrence and/or aggregate.
2. The Attorneys shall be responsible for payment of all deductibles contained in any insurance required hereunder.
3. If during the term of this Agreement changed conditions or other pertinent factors should in the reasonable judgment of the city render inadequate insurance limits, the Attorneys will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be effected at the Attorneys' expense, under valid and enforceable policies, issued by the insurers of recognized responsibility which are well-rated by national rating organizations and are acceptable to the City.
4. All policies shall name the Attorneys as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior notice date to the City.

All policies except Professional Liability insurance shall name the City of Novi, its officers, agents and employees as additional insured. Certificates of Insurance evidencing such coverage shall be submitted to Sue Morianti, Purchasing Manager,

City of Novi, 45175 West Ten Mile Road, Novi, Michigan 48375-3024, prior to commencement of performance under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.

5. If any work is sublet in connection with this Agreement, the Attorneys shall require each Attorney to effect and maintain at least the same types and limits of insurance as fixed for the Attorneys.
6. The provisions requiring the Attorneys to carry said insurance shall not be construed in any manner as waiving or restricting the liability of the Attorneys under this Agreement.
7. The City has the authority to vary from the specified limits as deemed necessary.

Exhibit B

Scope of Services

The Attorneys shall perform and/or represent the City regarding the following services:

- Prosecution of misdemeanor offenses as defined in the city codes and ordinances.
- Prepare and present criminal cases for bench and/or jury trial.
- Attendance at the 52-I District Court on the determined City of Novi court day.
- Attendance at all formal hearings and pre-formal hearings involving Novi Police personnel or Novi Police cases.
- Attendance at all pre-trial hearings involving City of Novi Police personnel or Novi Police cases.
- Set a day and time for office hours at the Novi Police Department Prosecutor's Office (minimum of three hours per week or as needed) for review of cases filed by Novi Police personnel and consultation with Novi Police personnel.
- Communicate charging decisions to victims and police personnel.
- Lead misdemeanor criminal cases through the court process.
- Coordinate the subpoena of victims, witnesses and police personnel with the Novi Police Court Services personnel.
- Coordinate the discovery process involving Novi Police reports, statements, evidence, etc. with attorneys representing defendants in criminal cases.
- Work with the Public Safety Director and/or his/her designee to improve the effectiveness and efficiency of cases presented for prosecution by the Novi Police Department.
- Provide legal research as it relates to the City codes and ordinances.
- Inform Novi Police personnel of statutory changes that could impact the City codes and ordinances.

PROSECUTORIAL SERVICES

FEE PROPOSAL

City of Novi
Sue Morianti, Purchasing Manager
47175 W. Ten Mile Road
Novi, MI 48375-3024

Gabe, Quinn & Seymour

Because of the severe economic times, Gabe, Quinn & Seymour will hold its hourly rate to \$110.00 per hour which has been the same rate that has been in effect for the last several years.



CITY COUNCIL

CITY OF NOVI

Consultant Review Committee Meeting

Tuesday, December 4, 2012 at 6:00 p.m.

Mayor's Conference Room | Novi Civic Center | 45175 W. Ten Mile Road

Meeting called to order at 6:07 p.m.

COUNCIL MEMBERS PRESENT: Council Members Casey, Staudt, Wrobel

OTHERS PRESENT: Victor Cardenas, Assistant City Manager
Tia Gronlund-Fox, Director of Human Resources
David Molloy, Director of Public Safety/Chief of Police
Melissa H. Place, Administrative Assistant

APPROVAL OF AGENDA

Moved by Casey, supported by Wrobel; **CARRIED UNANIMOUSLY:** To approve the agenda as presented.

APPROVAL OF MINUTES

Moved by Casey, supported by Wrobel; **CARRIED UNANIMOUSLY:** To approve the November 14, 2012 meeting minutes as presented.

PURPOSE OF THE MEETING

1. Interviews for Labor Relations and Employment Law Legal Services.

Mr. Victor Cardenas explained it was a good time to test the market to see what kinds of proposals would be received. A Request for Proposal was advertised, and the City received 10 proposals but not all the firms had relevant and significant municipal labor law experience. Out of these submissions two firms have significant 312 Arbitration experience and provided a sound proposal. The firms are Keller Thoma and Steven H. Schwartz & Associates. Ms. Gronlund-Fox added that Keller Thoma has been the firm providing this service since she has been with the City, and they are familiar.

Mr. David Staudt commented as a whole City Council has not been thrilled with the recent arbitration awards. Ms. Gronlund-Fox understands and does not know why the outcomes were what they were; however, she is not surprised. Mr. Staudt said with the majority of decisions he was not surprised but he was by the Police PA 312 Arbitration award. Ms. Gronlund-Fox believes with the increase of contributions to health care the arbitrator focuses on balancing this cost by awarding a salary increase of 1.5%. [Mr. Staudt says basically the money is given not because they are doing a good job to merit a raise.] Ms. Gronlund-Fox explained when there is an award it is given across the board, which is the reality.

Mr. Staudt commented the City counts the pennies and the arbitrator passes it on without a blink. Mr. Wayne Wrobel said the City is non-profit with a defined income. While we are seeing movement in developments (residential & commercial), the only true way to get more funds is with a tax increase. Are there any specific points to mention, asked Mr. Staudt? Ms. Gronlund-Fox mentioned the arbitration outcomes, the lack of correspondence and communication. However, Keller Thoma recently hired an attorney and the City has gotten more responses, along with Dennis DuBays' role over the next few years. Mr. Staudt asked if DuBay would be retiring. Mr. Cardenas said that is a possibility in the near future (next five years). Has anyone other than DuBay been involved with 312 Arbitration, asked Mr. Staudt? Ms. Gronlund-Fox said no. Richard Fanning has been involved in grievances.

a. Keller Thoma – Dennis DuBay and Richard Fanning

Mr. Cardenas welcomed the representatives and commented this interview is the end result of the process. Keller Thoma is one of two firms being interviewed tonight. This is an opportunity for clarifications and to share your thoughts. Mr. Staudt continued that the City is very familiar with Keller Thoma but thought it was a good idea to cast out a net to see what is out there. We know Keller Thoma has great qualifications but we were not excited about the recent 312 Arbitration decisions.

Mr. Rick Fanning explained the firm has 20+ attorneys that practice labor and employment relations law. Keller Thoma is known for credibility and our reputation. Hopefully, Judges respect our work. The firm has attorneys for Family Leave Act, Americans with Disabilities Act, Workers Compensation, etc. We have the resources and add value for the clients. Mr. Staudt asked if there were any questions. Ms. Laura Marie Casey asked for their expertise? How is information shared? Does Keller Thoma schedule trainings and seminars? Mr. Fanning said information is shared electronically. The firm recently hired three attorneys and one is tasked with monitoring and distributing legislative updates. We have done seminars in the past but it is difficult to get everyone in a room. Mr. DuBay added that seminars are good that day but things are changing consistently. A decision was made not to do seminars.

Mr. Wrobel asked out of the 20+ attorneys, how many are dedicated to Novi? Mr. DuBay said Rick Fanning is the lead and then there are four/five others that can assist if needed. Mr. Staudt commented that Mr. DuBay is the primary 312 Arbitrator so he asked Mr. DuBay how much longer he plans to practice. Mr. DuBay answered his goal is to go to part-time eventually. Mr. Fanning does 312 Arbitration(s) for other cities so he is very familiar and experienced. So, your intent is to be with the firm over the next five years, asked Mr. Staudt. Mr. DuBay commented he would like to transition to "of counsel" and only work a couple days a week. Mr. Staudt commented his opinion is that Mr. DuBay is spread pretty thin and some of our needs are not being met. Mr. DuBay said Keller Thoma is a great firm with a great record.

Who is the next person for 312 Arbitration, asked Mr. Staudt? Mr. Fanning said he does 312 Arbitration for other cities, and would like to represent Novi in their next 312 hearing. Mr. Staudt said 312 Arbitration brings its challenges. However, there has to be some balance. The City's ability to pay is an issue; with a healthy fund balance Arbitrators are more likely to award wage increases. Is there any option to 312 Arbitration, asked Mr. Staudt? Mr. Fanning said the arbitration process is not going away but Public Act 54 is a positive for city/township governments.

What is the next step now, asked Mr. Fanning. Mr. Staudt said a recommendation will be made tonight and be brought to City Council at their December 17, 2012 meeting.

b. Steven H. Schwartz & Associates – Steven Schwartz and Gregg Schultz

Mr. Staudt gave the welcome and opened up dialogue for discussion. Mr. Steven Schwartz began by stating the majority of his municipal clients are communities with a strong mayor form of government and some of the communities are in a critical state of how to avoid emergency financial management.

Are you involved in a lot of 312 Arbitrations, asked Mr. Staudt? Mr. Schwartz said yes and has won all but one. Mr. Gregg Schultz added he had a recent case in Plymouth Township as well. Mr. Schwartz commented most employers are slow in using legislation, such as Public Act 54, as an effective tool for negotiations. The majority of unions would rather not go to arbitration. Ms. Gronlund-Fox said that is not the case in Novi. Mr. Schwartz said an option is to have contracts end when the insurance rates increase. Mr. Staudt said Novi is financially sound because of proper and deliberate planning while other cities are not. Mr. Schwartz said Novi has a healthy Fund Balance so it makes it difficult to argue otherwise. Novi has done some positive steps like going to Defined Contribution and to the 80/20 cost share for employee health care premiums. However, the next five years economically are not going to be great.

What can your firm do better or stand out from Keller Thoma, asked Mr. Wrobel? Mr. Staudt added that Mr. DuBay has been the primary for 15 years. The City has frozen administration wages for a number of years and made staff cuts. Still, we have a small fire personnel and a large police group. Mr. Schwartz said he and Mr. Schultz are doing cutting-edge work with City of Detroit Water Department and have successfully negotiated nine contracts. Negotiation mood needs to be reformed, time does matter, control is needed, and an agenda needs to be set.

Recently, we worked with Bay City, and received a contract over Keller Thoma, which was combining police and fire personnel into one discipline to form a Public Safety Department. Mr. Staudt said Novi has a Public Safety Department. Mr. Schwartz said this is different in that officers fill both roles; police and fire. Each individual is trained to do fire and police services. We were hired and an agreement is signed.

Novi is looking to have responses within a reasonable timeframe. How does the firm handle calls, asked Mr. Staudt? Mr. Schwartz said we typically return calls in a few hours or no more than a day. Mr. Schultz and I work closely with our schedules so that we can meet the needs. Mr. Staudt said Novi is a Council/Manager form of government. It seems this form has a stronger depth of labor knowledge. Mr. Schwartz said that is true and is a good thing. There is much less education needed when a City has knowledgeable administrators and staff. The City needs to think strategically from the beginning of negotiations when dealing with a 312 Arbitration eligible group. Mr. Staudt asked how did your firm get the Bay City job over Keller Thoma? Mr. Schwartz said he had delivered a short speech at a conference about new legislation and how to apply these laws, and the Human Resources Director from Bay City was in attendance. We met and came to an agreement of representation. The Bay City Manager was not confident that Keller Thoma could do the job.

Mr. Staudt said he learned from the previous Mayor Landry that Council Members need to come to a meeting to vote. This was great advice. It is important to get things accomplished. How does your firm share information, changes in legislature, etc.? Mr. Schwartz shared an article he wrote for *Lawnote* publication on changes in the public sector for labor law titled *Overview of Two Major Changes in Michigan Public Sector Labor Law* published on January 19, 2012. We are continuously reviewing what is happening at the State and Federal levels and sharing electronically. We learn of the changes and pass it on like the Right to Work. Mr. Staudt asked what that means to Novi. Mr. Schwartz said not as many grievances, arbitration and 312 Arbitrations.

Ms. Casey asked how they, Mr. Schwartz and Mr. Schulz, work with each other on who does what, etc. Mr. Schwartz explained that Mr. Schultz does the employment relations and the day-to-day is up to the City. Each of us can do the work and share with the other what is going on. As an example, if Mr. Schwartz gives the City a direction/advise than he would continue through with that item.

Moved by Casey, supported by Thoma; CARRIED UNANIMOUSLY: To engage Keller Thoma to provide Labor Relations and Employment Law Legal Services for a three year contract with two one-year renewal options.

Break

2. Discussion with representatives from Gabe, Quinn & Seymour, Prosecuting Attorney – Matt Quinn, Phil Seymour, Scott Baker

Mr. Staudt opened the discussion that a few years ago he learned about the role of the prosecutor and thought it was a good idea for the new Council Members, serving on the committee, to get an understanding of the role. So, here is an opportunity to give an overview and share how much longer you plan to practice to share your institutional knowledge with Mr. Baker, as an example.

Mr. Phil Seymour said he first started in 1977 with Novi and has been an attorney for 38 years. The week starts out on Monday's at 52-1 District Court for pre-trials, pre-formal hearings, and walk-ins followed that afternoon with bench trails and formal hearings. Then every other Thursday at the police department reviewing complaints or writing reports. Also, Mr. Baker handles the court. Mr. Staudt asked how many cases does he see in a week? Over 50 cases, answered Mr. Seymour. How much time is that, asked Mr. Staudt? Mr. Seymour responded about 50 to 70 hours a month. Mr. Baker handles Novi as well. He is the point of contact if I am not available.

Mr. Staudt asked what proactive things, like sharing of information, does the firm actually distribute? Mr. Seymour said recently there was a Federal Law case that Mr. Quinn became aware of about identity theft pertaining to parking tickets. There was a class action case where parking tickets were left on a windshield, not unlike Novi, which contained name, address, birthdate, driver's license, etc. Of course, all of this information is not necessary to write a ticket. Mr. Quinn shared this information with me and it was forward to parties that would find it useful, such as Novi. Chief Molloy said that was important information that was shared with his command officers who in turn shared with the road patrol officers.

Mr. Wrobel asked how many cases go to trial? Mr. Seymour answered most are domestic disputes or driving while intoxicated. Mr. Staudt asked if he represents at Circuit Court? Mr. Seymour said no. Those cases start out as a circuit court case and move through the system. However, there has been a change where high Blood Alcohol Concentration punishment has gone from 93 days to 180 days which we can enforce but may go to Circuit Court on appeal. Mr. Wrobel asked about Minors in Possession. Chief Molloy responded there are some changes but there are cases if the minor follows the rules their record is expunged in six months.

Mr. Staudt asked what does Mr. Seymour do at court? Mr. Seymour said pre-trials but most of the cases are resolved. While the charge is reduced the court costs are incurred at the higher charge. Mr. Staudt commented they are doing a great job and trust they will continue do good work for Novi.

Moved by Casey, supported by Wrobel; CARRIED UNANIMOUSLY: To engage Gabe, Quinn & Seymour to provide Prosecution Attorney Services for a three year contract with two one-year renewal options.

3. Discussion with representatives from Johnson Rosati Schultz & Joppic – Legal Services – Thomas Schultz

Mr. Staudt opened the discussion by stating City Council approved the firm for a one-year extension after the move in March to set the firm for future multi-year contract. Mr. Thomas Schultz commented the newly organized firm is strong and working out better than expected for this short time of adjustment. Mr. Staudt mentioned he likes Gary Dove. Mr. Schultz said Mr. Dove has been with the firm for about four months but they worked together for 20 years at a previous firm. He brings a lot of experience.

Mr. Staudt asked Mr. Schultz if he was going to continue being the primary contact. Mr. Schultz said most definitely. Beth Kudla Saarela will cover Zoning Board of Appeals and Gary Dove will most likely assume the Planning Commission responsibility. They are available to assist in my absence, too. Mr. Wrobel asked how many attorneys are in the firm? Mr. Schultz responded there are a total of 28 with eight of those out of the Lansing Office. That office's main focus is insurance defenses and labor law. Is the firm looking to hire more labor attorneys, asked Mr. Staudt? Mr. Schultz said this is a possibility.

Mr. Staudt asked Mr. Schultz about Steve Schwartz. Mr. Schultz said he is familiar with Mr. Schwartz since he is on the Farmington Hills Planning Commission. Mr. Wrobel asked if he is aggressive at the meetings? Mr. Schultz said he listens but is not shy to give his opinion. Mr. Wrobel said the Committee likes his approach and wonders if there is any way to use both firms of Keller Thoma and Steve Schwartz & Associates? Mr. Staudt said while Keller Thoma is a large firm Mr. Schwartz had some interesting ideas. We would like you to think about how we might use both firms. We believe there may be some benefit. Is there anything keeping the City from hiring another firm for something specific? Mr. Schultz said there is nothing saying the City cannot hire as many as attorneys as they want. However, the contractual firm would need to be informed of the intent.

So, Council/administration could direct you to look into another firm for an issue, asked Mr. Staudt. Mr. Schulz said yes. As an example, when the City was in negotiations for the

Signature Park property there was an issue about mineral rights. It was beyond my knowledge as well as anyone at the firm's scope so it was suggested to hire an attorney for that expertise.

Mr. Staudt asked Mr. Cardenas if the City is looking for the same contract timeframe? Mr. Cardenas said yes, which is a three-year term with the option of two one-year renewals. How does that match up with other cities, asked Mr. Staudt. Mr. Cardenas said comparable. Mr. Staudt thanked Mr. Schultz for his time.

Moved by Wrobel, supported by Casey; CARRIED UNANIMOUSLY: To engage Johnson Rosati Schultz & Joppic, for Legal Services for a three year contract with two one-year renewal options.

Discussion

Mr. Wrobel liked the Schwartz/Schultz approach. Mr. Staudt agreed. He is not sure if we are getting everything we can, not unlike the Plante & Moran issue. Mr. Cardenas understands the viewpoint. It is likely police will go to arbitration. Schwartz/Schultz did have a unique approach. Mr. Staudt asked Mr. Cardenas to talk with Mr. Pearson about what we can do to use them like bringing them in to talk to City Council in an Executive to gain some ideas.

AUDIENCE COMMENTS – None

Moved by Casey, supported by Wrobel; CARRIED UNANIMOUSLY: To adjourn the meeting at 8:40 p.m.