

STAFF REPORT

DATE: October 26, 2010
TO: City Council
FROM: Melissa Chaney, Human Resources Administrator
SUBJECT: Resolution Allowing City Manager to Execute a Contract with Avery and Associates for Professional Labor Contract Negotiation Services

Recommendation

Adopt the attached resolution allowing the City Manager to sign a contract for professional services with Avery and Associates for labor contract negotiations.

Fiscal Impact

The cost for the contract will not exceed \$30,000. Funds budgeted through the General Fund.

Council Goal(s)

Fiscal Stability.

Background and Analysis

It has been the custom and practice of the city organization to utilize management staff to represent the City Council during labor negotiations with employee groups. Although this approach has yielded successful negotiations in the majority of situations, it does pose certain challenges. It can be very time consuming, and there can be benefits in utilizing the experience of an outside party negotiator. As the Council is well aware, after many months of good faith negotiations, the Council determined it was necessary to impose a Last, Best, Final Offer for FY2009/2010 on the DCEA in June and contract negotiations have remained at a standstill since.

The City needs to begin contract negotiations for FY2010/2011 with DCEA. Council has indicated its preference is to hire an independent labor negotiator to conduct those negotiations.

As requested by City Council, staff began a search for potential negotiators. Based on recommendations from the City Attorney's Office and other cities in the area, staff contacted a number of labor negotiators and interviewed the four potential contractors who had the availability to begin immediately and/or who were interested in acquiring new clients.

Staff interviewed Kelly Tuffo (Liebert Cassidy and Whitmore), William Avery (Avery and Associates), Larry Menth, and Bruce Heid (IEDA). The interview panel consisted of the City Manager, Assistant City Manager and the Human Resources Administrator. A number of questions were asked designed to determine each contractor's level of experience, negotiation style and ability to relay information and guide the City Council through the process.

Ms. Tuffo is an attorney with Liebert, Cassidy and Whitmore, a San Francisco firm specializing in labor relations and employment law. She has experience in both private and public sector negotiations experience, but focuses now only on public sector negotiations. Ms. Tuffo's fees were based on an hourly rate of \$190 per hour.

William Avery is the President of Avery and Associates, a consulting firm that specializes in public sector agency labor negotiations and recruitments. Mr. Avery has over twenty-five years of public sector negotiation experience and has an extensive resume of local government agency negotiation experience, including acting as Chief Negotiator for the City of Woodland. Mr. Avery's fees were based on either a flat fee or an hourly rate of \$225 per hour. The City at this time would choose to utilize the hourly rate option.

Larry Menth, an independent consultant, has over twenty years of labor relations experience as a decade-long field representative for an international labor union, Assistant Deputy Director for Labor and Human Resources with CALFIRE and as an independent consultant. Although Mr. Menth does have some limited local government agency contract negotiations experience, most of his experience is with large government agencies. Mr. Menth's fees were based on an hourly rate of \$90 per hour.

Bruce Heid is part of the professional staff of IEDA. IEDA is a long established firm that offers an array of Human Resources services for a monthly fee based on the number of employees in an agency. Mr. Heid has been with IEDA since 2004 and prior to that was the Personnel Director for Napa County for nine years. IEDA requires a long term contract for services.

While all the possible candidates had labor negotiation experience and met minimum qualifications, William Avery has the most experience in labor negotiations specific to California cities. Since Mr. Avery's primary focus is contract negotiations, he has committed to be the lead negotiator for the City, should we proceed with his firm. This would allow Council to draw from Mr. Avery's years of service and utilize his expertise in regards to contract negotiations.

Mr. Avery not only strongly represents his clients' interests, he tries to build/rebuild relationships with the bargaining groups. Staff looked favorably on that approach given the status of negotiations with DCEA. Mr. Avery's philosophy also includes building long term relationships with his clients. This was verified by his references, which were all impeccable.

Staff believes Mr. Avery's experience and negotiation philosophy is a good match for the City of Davis and will align well with the City Council's goals for negotiations.

Therefore staff recommends contracting with William Avery from Avery and Associates to conduct labor negotiations with the Davis City Employee's Association.

Attachments

1. Resolution
2. Contract

RESOLUTION NO. 10 - _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
ALLOWING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH AVERY
AND ASSOCIATES FOR NEGOTIATION CONSULTANT SERVICES**

WHEREAS, the City of Davis has the need for professional services of a Chief Labor Negotiator in its upcoming labor negotiations with the Davis City Employees Association;

WHEREAS, the City now desires to have William Avery of Avery and Associates to serve as its Chief Labor Negotiator in its upcoming labor negotiations with the Davis City Employees Association.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Davis that the City Manager is authorized to execute the attached Professional Services Agreement with Avery and Associates to provide professional labor negotiation services for the City of Davis in an amount not to exceed \$30,000.

ADOPTED BY THE CITY COUNCIL of the City of Davis this 26th day of October, 2010, by the following vote:

AYES:

NOES:

ABSENT:

Don Saylor,
Mayor

ATTEST:

Zoe Mirabile
City Clerk

AGREEMENT BETWEEN

THE CITY OF DAVIS

AND

WILLIAM AVERY & ASSOCIATES

This agreement, effective October [REDACTED], 2010 is entered into by and between WILLIAM AVERY & ASSOCIATES, INC. (hereinafter referred to as CONSULTANT) and the CITY OF DAVIS (hereinafter referred to as CITY).

WITNESSETH:

WHEREAS, CITY has need for specialized consultant services for labor negotiations; and

WHEREAS, CONSULTANT has the training, experience and competence to perform the specialized service required by the CITY; and

WHEREAS, CITY has authority under state law to employ CONSULTANT;

NOW THEREFORE, the parties to this agreement do hereby mutually agree as follows:

I.

DUTIES OF CONSULTANT

1. CONSULTANT will provide any and all requested or required services within the Labor Relations and Personnel activities of the CITY including but not limited to: advice and consultation/negotiations with bargaining units; mediation and fact finding activities of such units; and such other advice, opinion or assistance requested by the CITY through the City Council, the City Manager or his/her designees.
2. CONSULTANT in carrying out the terms and conditions of this agreement is an independent contractor and is not an employee of the CITY.

II.

DUTIES OF CITY

1. CITY shall cooperate with CONSULTANT in the performance of this agreement as follows:



- a) Providing all information reasonably accessible to the CITY which may be helpful to CONSULTANT in the performance of his services, and;
- b) Providing a management team to assist CONSULTANT during negotiations sessions, and;
- c) Providing clerical assistance as CONSULTANT may reasonably require when on-site and;
- d) Providing a suitable location where negotiation sessions may be conducted.

III.

CONSIDERATION

- 1. In consideration for the services rendered by CONSULTANT as specified, CITY agrees to pay CONSULTANT Two Hundred and Twenty-five Dollars (\$225.00) per hour.
- 2. CONSULTANT will charge for reasonable travel expenses.
- 3. CONSULTANT shall not charge for clerical time, copies, phone calls, etc. incurred by CONSULTANT at CONSULTANT's office.
- 4. Total payments for both Professional Services and Expenses will not exceed \$30,000 without the express authorization of the CITY. CONSULTANT shall provide regular invoices to CITY, not less than monthly, and shall provide specific notice to CITY in the invoice which takes the City over \$20,000 in total billings.

IV.

TERM

The term of this agreement shall be open until cancelled or until the "not to exceed" amount is reached. This agreement may be cancelled by CITY, at CITY's sole discretion, at any time, upon written notice.

WILLIAM AVERY & ASSOCIATES

CITY OF DAVIS

William H. Avery

Dated: _____

Dated: _____



Indemnity Agreement

This is an Indemnity Agreement (the “Agreement”) is made and effective (DATE),

Between: City of Davis, (the “Indemnitor) municipal corporation organized and existing under the laws of California, with it’s mailing address is:

City of Davis
23 Russell Blvd
Davis, CA 95616

And: Bill Avery and Associates

In consideration of the attached contract Bill Avery and Associates hereby indemnifies and holds harmless and releases and discharges the City of Davis, its officers, agents, employees and volunteers from any and all liability, claims, demands, losses and expenses, actions or rights of action which arise out of, or are in any way related to, or connected with the agreement attached.

Insurance: Contractor shall at all times during the term of this contract, at the Contractor’s sole cost and expense, obtain and keep in force:

Comprehensive general liability insurance, including owned and non-owned and with a minimum combined single limit in the amount of one million dollars (\$1,000,000) per occurrence for bodily or personal injury to, illness of, or death of persons, and damage to property. All such liability insurance shall name City and its officers and its employees as an additional insured.

Contractor will provide City proof of Worker’s Compensation insurance, as required by California Labor Code 3700 et seq.