

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Steven Kueny, City Manager 

DATE: March 28, 2012 (CC Meeting of 4/18/12)

SUBJECT: Consider Request for Proposals for City Attorney Services

BACKGROUND

Pursuant to an agreement, Burke, Williams & Sorensen (BWS) has served as City Attorney and provided associated legal services to Moorpark since incorporation in 1983. During that time, three individuals have served as the designated City Attorney. In 1983, there were a limited number of legal firms serving northwest Los Angeles, Ventura, and Santa Barbara counties specializing in public law and municipal representation. There are now many qualified firms capable of serving these areas. Since incorporation, the City has periodically sought updated proposals for engineering, building and safety, and auditing services but not legal services. The Public Contract Code does not apply to legal services, and the City is not obligated to put its legal services out to bid. Staff believes the Request for Proposals process will result in standardized responses from interested firms and individuals, save time, and make it easier to compare the proposals.

DISCUSSION

The City continues to have a good working relationship with BWS. In addition to being responsive, they have been adaptive in meeting the changing needs of the City, including several cost containment measures implemented over the last decade. The legal advice needed by the City Council and city staff is often driven by court decisions and new and expanded regulations.

To insure the City is receiving outstanding service at competitive rates, it is recommended the City Council consider authorizing Request for Proposals (RFPs) from qualified firms and individuals. Staff intends to e-mail notice of the availability of the RFP to individuals and firms known to provide legal services to municipalities in the Southern California area. They would be directed to view the notice on the City's

website and, if interested, download the RFP. Ads will be placed in up to two publications likely to be viewed by prospective proposers. For control purposes, the RFP will require the proposals to be mailed to the City and contain an original signature on the Letter of Transmittal. The proposals will be kept confidential until the City Council makes a determination on the service provider.

If the Council concurs, it is also recommended those responding to the RFPs address how they would propose the City retain the services of other legal firms for services the respondent doesn't provide; for example, employee relations/human resources, or Bond Counsel. This is important to insure coordinated and cost efficient services. Likely options would include the "Proposer" contracting with another firm, administering a separate City contract, or relying on City staff to coordinate the services between the two firms. This will be a critical element in evaluating the proposals. Staff prefers that the firm provide as many of the essential specialties as possible but does not want to preclude otherwise qualified firms and individuals from submitting proposals.

As drafted, the RFP would permit proposers to not have in-house employee relations/human resources' attorneys. If the City Council wants Proposers to have this capability, then the RFP must be modified.

The City's current legal services agreement provides for the first ten hours of service each month at a reduced rate of \$140.00 per hour. Many cities utilize this system which is referred to as a "Retainer." As proposed, the RFP does not require use of a Retainer. If the City Council wants Proposers to be required to use a Retainer, then the RFP must be modified.

If the Council authorizes the RFP process, it is recommended the proposals be evaluated as follows:

- Staff would review all proposals for responsiveness to the RFPs and recommend up to eight (8) proposals for review by a City Council Ad Hoc Committee.
- City Council Ad Hoc Committee would review the staff recommended proposals and refer up to five (5) Proposers for consideration by the City Council in closed session.

It is projected that this process will take about 120 days from the issuance of the RFP to complete. It is proposed that the RFP be issued as of April 30, 2012.

FISCAL IMPACT

None

Honorable City Council
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STAFF RECOMMENDATION

Authorize the City Manager to proceed with Request for Proposals for City Attorney services as outlined in this report and appoint a City Council Ad Hoc Committee.

SK:db

Attachments: 1) Draft RFP
2) BWS Contact

**DRAFT
CITY OF MOORPARK**

REQUEST FOR PROPOSALS

CITY ATTORNEY SERVICES

APRIL 30, 2012

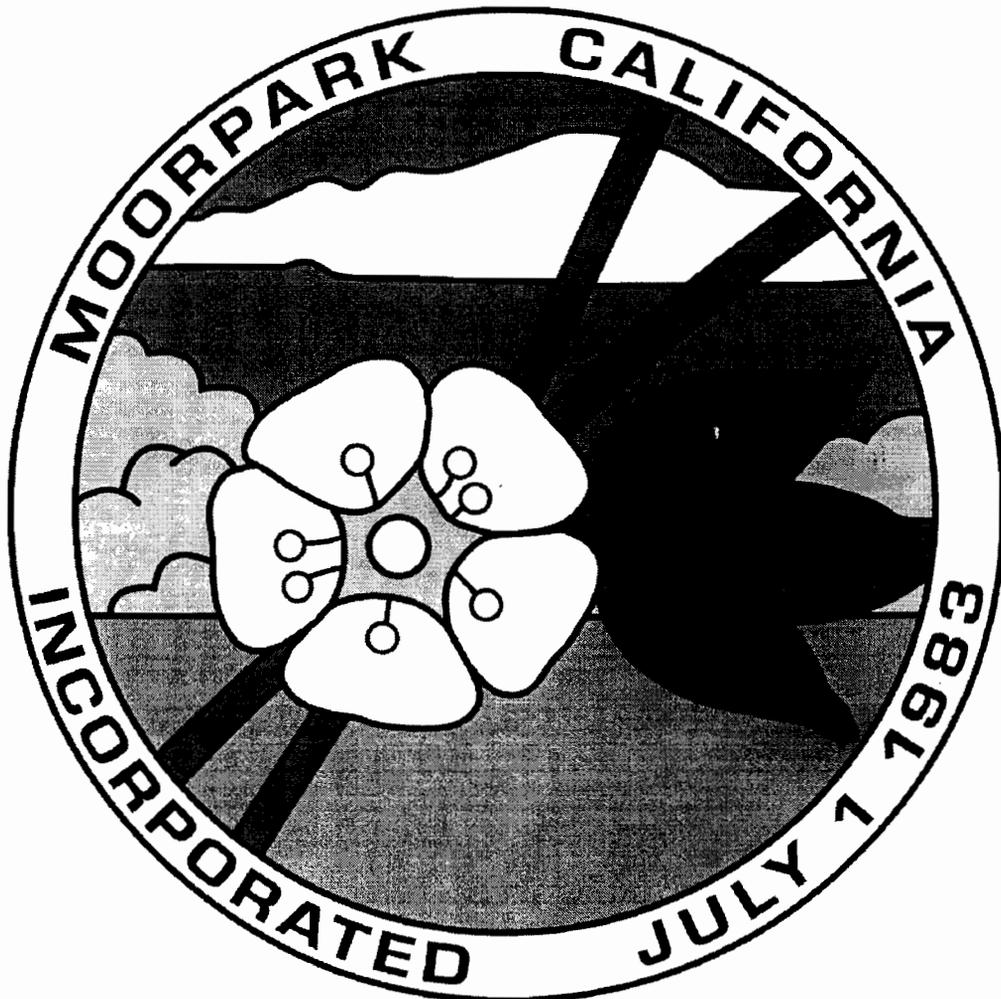


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I. GENERAL INFORMATION

A. Introduction

The City Council of the City of Moorpark (City) invites interested firms and individuals with a minimum of ten (10) years of municipal law experience to submit written proposals to provide City Attorney services for the City. As City Attorney, the selected law firm or individual will be expected to provide a wide range of legal services to the City. The City Attorney is selected by the City Council and works closely with the City Manager and other City staff.

B. Proposed Time Schedule

RFP Mailing	April 30, 2012
Submittal Deadline	June 7, 2012, 4:00 p.m.
Staff Review	June 8 – 22, 2012
First Review by Ad Hoc Committee	June 25 – July 12, 2012
City Council Interview with Finalists	July 16 – August 24, 2012

C. Submittal Guidelines

Law firms or individuals interested in submitting proposals for City Attorney shall submit one (1) original unbound proposal marked "ORIGINAL" and eight (8) hard-cover bound copies, marked "COPY," on or before the Submittal Deadline of the proposal, with a proposed contractual agreement, in a sealed envelope bearing the caption "*City of Moorpark – City Attorney Proposal.*" The Letter of Transmittal portion of the proposal must bear original signature(s). The envelope shall be addressed to:

Deborah S. Traffenstedt, Deputy City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

If discrepancies are found between copies, or between the original and copy or copies, the ORIGINAL will provide the basis for resolving such discrepancies. If no document can be identified as original bearing original signatures, Proposer's proposal may be rejected at the discretion of the City.

Proposals may be submitted in person to the Deputy City Manager's office or by mail, but must be received in the Deputy City Manager's office by 4:00 p.m. on June 7, 2012. Proposer is solely responsible for ensuring its proposal is received by the City in accordance with the proposal requirements, before the Submittal Deadline; at the place specified. No oral, telegraphic, electronic, facsimile, or telephonic proposals or modifications will be considered. The City shall not be

responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery.

Proposers of a proposal received after the scheduled Submittal Deadline will be notified by e-mail of such and upon written request, the proposal will be returned to them.

The original copy of each proposal will be retained for official files and will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by applicable law. Each Proposer may clearly label part of a proposal as "CONFIDENTIAL" if the Proposer thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City will constitute a complete waiver of all claims for damages caused by any release of the information. If a public records request for labeled information is received by the City, the City will notify the Proposer of the request and delay access to the material until seven working days after notification to the Proposer. Within that time delay, it will be the duty of the Proposer to act in protection of its labeled information. Failure to so act will constitute a complete waiver of all claims for damages caused by any release of the information.

Proposals will not be opened publicly, and the City will endeavor to keep the proposals confidential until a preferred service provider is recommended to the City Council.

The City reserves the right to postpone the Submittal Deadline and opening of proposals any time before the date and time announced in the Request for Proposals or subsequent addenda. The City may also cancel this solicitation at any time.

The City reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations. The City Council reserves the right to reject any or all proposals, to request additional information concerning any proposal for purposes of clarification, to accept or negotiate any modification to any proposal following the deadline for receipt of all proposals, and to waive any irregularities if such would serve the best interests of the City as determined by the City Council.

The City may modify, clarify, or interpret the RFP by sending an addendum to each firm or individual that originally received the RFP. Any such addendum shall become part of the RFP and of any contract awarded. The City is not responsible for any other explanation or interpretation.

A Proposer may withdraw its proposal by submitting an email or written request to Deborah S. Traffenstedt, Deputy City Manager, to withdraw prior to 4:00 p.m., June 7, 2012, in which event the proposal will be returned to the Proposer.

The City will accept pre-submittal questions from RFP participants in the interest of clarity and complete responses to RFP. The RFP participants are encouraged to cover all questions in one request so that City staff can provide timely and effective responses.

All pre-submittal questions about the RFP and City's current legal services will only be accepted by email until Wednesday, May 30, 2012, at 5:00 p.m. Responses to all questions will be confidentially emailed to all individuals and firms sent a proposal or others who have responded to the RFP as of the date any such questions are received. RFP questions are to be submitted to Deborah S. Traffenstedt at:

dtraffenstedt@ci.moorpark.ca.us

Any Proposer who wishes to make modifications to a proposal already received by the City must submit a written request to withdraw its proposal in order to make the modifications. It is the responsibility of the Proposer to ensure that modified proposals are resubmitted in accordance with the terms and conditions of this RFP and before the Submittal Deadline.

If there is reason to believe that collusion exists among the Proposers, the City may refuse to consider proposals from participants in such collusion as proposed City Attorney. No individual or firm under the same or different name, may make, file, or be interested in more than one proposal in response to this RFP. An individual or firm proposed as a subcontractor consistent with the description provided in Section II., Scope of Service, may be included as part of the proposal from more than one Proposer.

The City requires all Proposers to comply with all applicable federal and state laws including but not limited to equal employment opportunity. Contracts are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation.

The firm selected to provide City Attorney services shall be an independent contractor. All persons employed by a firm in accordance with a contract resulting from this RFP will be employees of the firm and not employees of the City.

The City is not liable for any costs incurred by the Proposer before entering into a formal contract. Costs for developing the proposal or any other such expenses incurred by the Proposer in responding to the RFP, are entirely the responsibility of the Proposer, and shall not be reimbursed in any manner by the City. No reimbursable cost may be incurred in anticipation of award.

D. City of Moorpark

Moorpark is a city of about 35,000 residents located in eastern Ventura County. It was incorporated on July 1, 1983, as a general law city with a Council-Manager form of government. The City Council consists of a directly elected Mayor with a two-year term and four Councilmembers with staggered four-year terms. General Municipal elections are held in November of even numbered years. The City Council's regular meetings are scheduled the first and third Wednesdays of the month at 7:00 p.m.; and the Planning Commission's regular monthly meeting is the fourth Tuesday at 7:00 p.m.

The City has about 55 full-time employees and about 50 part-time employees used primarily for parks and recreation programs. SEIU Local 721 represents about 28 full-time employees in two bargaining units. Many services are provided by contracts including law enforcement (Ventura County Sheriff); building and safety (Charles Abbott Associates); engineering (RJR); library (LSSI); and portions of streets, parks, and landscape maintenance. Water, sewer, and fire protection services are provided by County-governed special districts. City Attorney and related legal services are currently provided by Burke, Williams & Sorensen (BWS). A copy of its agreement with the City is attached. General liability and workers compensation insurance are provided through the California Joint Powers Insurance Authority (CJPIA). On average, the City expended about \$145,000 for non-litigation services and \$132,000 for litigation services in each of FY 2009/10 and FY 2010/11. The City's FY 2011/12 Annual Operating Budget consists of about \$16M General Fund and \$8.5M Special Funds, exclusive of the former Redevelopment Agency. The Capital Improvement Budget is about \$20M. For more information about the City, visit www.ci.moorpark.ca.us.

E. Submittal Deadline

4:00 p.m., June 7, 2012.

II. SCOPE OF SERVICES

The anticipated services will include but are not limited to the following:

1. Attending City Council and other meetings as needed.
2. Coordination with any other Attorneys working for the City or its insurance provider as needed.
3. Act as legal counsel to other agencies the City Council serves as governing body including the Industrial Development Authority, Public

Financing Authority, Successor Housing Agency, and Successor Agency to the Redevelopment Agency.

4. Represent the City in civil litigation brought on behalf of or against the City.
5. Routine legal advice, telephone, and personal consultations with members of the City Council and City staff.
6. Review and/or preparation of staff reports, ordinances, resolutions, agreements, contracts, forms, notices, certificates, deeds, leases, and other documents required by the City.
7. Legal work pertaining to property acquisitions, property disposals, public improvements, easement dedications, and right-of-way abandonment.
8. Enforcement of City codes, zoning regulations, and buildings standards through administrative and judicial actions including criminal prosecution, if necessary.
9. The monitoring of pending and current state and federal legislation and court decisions as appropriate.
10. Consultation with the City Council and City staff as needed – rendering of legal advice and opinions (both oral and written).

It is expected that the Proposer will have in-house capabilities to advise and, if necessary, initiate and defend litigation pertaining to Public Records Act, Brown Act, election law, general liability, risk management, environmental law including CEQA and NPDES, contracts and franchises, real estate, eminent domain, land use, post ABx1 26 redevelopment, construction defects, and code compliance. It is preferred but not mandatory that the Proposer provide employee relations/human resources services. If the Proposer does not provide employee relations/human resources services, be very specific in your response to III.G.7. of this RFP.

Presently, the City Attorney generally is required to attend only one regular City Council meeting per month but is expected to be available to attend the other regular meeting if needed. When not in attendance at a regular or special meeting of the City Council, the City Attorney is occasionally required to attend closed session by telephone conference.

The City does not require regular office hours but expects the City Attorney to be available to attend meetings if needed from 4:00 to 7:00 p.m. on regular City Council meeting dates.

Prior to initiation of any work, the City may request a written statement of the estimated cost of the work.

III. PROPOSAL FORM AND CONTENT

A. Proposal Submittal

All pages of the proposal must be numbered consecutively. The proposal must be organized in accordance with the list of proposal contents. The proposal must provide specific and succinct responses to all questions and requests for information.

Proposers must include the following items in their proposals addressing the Scope of Services in Section II., above. Proposals and the fee schedule must be valid and binding for 120 days following the proposal due date and may become part of the agreement with the City.

B. Letter of Transmittal

Include a cover letter signed by a duly authorized representative of the firm. The cover letter must include name, address, telephone number and e-mail address of the Proposer submitting the proposal. In addition, the name, title, address, telephone number, fax number, and e-mail address of the person or persons who are authorized to represent the Proposer and to whom correspondence should be directed shall be included. An unsigned proposal is grounds for rejection.

C. Table of Contents

Include a clear identification of the submitted material by section and by page number.

D. Summary

Introduce the proposal and summarize the key provisions of the proposal. Provide a statement describing why the Proposer is qualified to perform this work, the names of the individuals who would serve as the City Attorney and Assistant City Attorney.

If your firm provides employee relations/human resources services, provide the name of the two most senior attorneys who would be designated to work with the City for these services.

E. Statement of Understanding

Include a detailed statement of understanding of the legal services to be provided. If there are services listed in this RFP that the Proposer will not be

able to provide, please be certain to address such in your response to III.G.7. of this RFP.

F. Background and Experience

1. Official name and address and specify the type of entity (partnership, LLC, corporation, etc.)
2. Describe your firm's background and history; include number of years in business. Describe the expertise your firm is able to provide the City.
3. Describe your firm's municipal and public agency Legal Services' experience and training.
4. List the location of office(s) that would serve the City of Moorpark.
5. Identify support staff services available (clerical support, paralegals, other non-attorney staff).

G. Approach to Legal Services

1. Describe your view of the role of the City Attorney.
2. Describe how you will keep the City informed about the status of litigation and other legal matters.
3. Provide an example of a written communication (not to exceed 6 pages) to a governing body about a legal issue, in which options are explained and a recommendation is given.
4. Describe how you track and manage legal fees and costs.
5. Describe how you would proactively advise the City about legal developments or issues of concern, without being asked. If you use Newsletters, News Briefs, or other communications, please describe general content and frequency of publication.
6. Describe the computer resources currently utilized within your office. The City utilizes the Microsoft Office software, including WORD for Windows word-processing software, and the City requires its contractors to use a compatible version of the Microsoft Office suite for all files provided electronically to the City. The City currently provides electronic agenda files to the City Attorney and has a wireless internet network available in the City Council chambers.

7. Please list specialty services you do not provide. Such might include employee relations/human resources; civil rights/voting rights; affordable housing; or preparation or review of debt financing documents. For any specialty services the Proposer does not directly provide, describe how you propose the City receive such services. Options may include but are not limited to separate agreement(s) with City with a firm selected by the City and administered by City; or separate agreement(s) with City with a firm selected by the City and administered by Proposer for the City; or subcontract to Proposer. Except as noted in the next paragraph, you are not required to address who would provide such specialty services just how such services are proposed to be provided.

If you do not provide employee relations/human resources services and are proposing a subcontractor, you are required to name the firm and specify the hourly rates for each type of service to be provided as well as the rates for any items which would be billed separately. Also provide the information identified in III.H. of this RFP for the principal attorney(s) from that firm who would provide such service(s). List that information here as part of your response to III.G.7., not as part of III.H.

H. Proposed Attorney(s)

Name the person whom you propose to designate as the City Attorney and Assistant City Attorney. If your firm provides employee relations/human resources services, name the two most senior attorneys who would be designated to work with the City for these services. Provide the following for each designee:

1. Certificates or licenses, including the date of admission to the State Bar of California;
2. Description of education, including names of educational institutions, degrees conferred, and year of each degree;
3. Professional background and professional associations;
4. Experience with and knowledge of the law relating to general law cities;
5. Specific areas of expertise and training; and
6. Provide names and qualifications of other attorneys in your firm who would be able to provide legal services in support of the primary attorney(s).

I. References and Potential Conflicts of Interest

1. Provide contact information for three municipal (preferred) or public agency clients for which services have been provided by the designated attorney in the last three years, so reference checks can be conducted. Please include the contact person's name, agency, phone, and email address.
2. List all public clients in the County of Ventura for whom your firm currently provides services under a fee for services basis or on a retainer basis and indicate the services provided. Identify any foreseeable or potential conflicts of interest that could result from such representation and the manner in which you would propose to resolve such conflicts.
3. For the person designated as City Attorney, list all public clients that person presently represents as City Attorney, Deputy City Attorney, or Assistant City Attorney, along with the meeting dates and times for each governing body.
4. List all private clients of your firm such as land developers, builders, or contractors that could potentially pose a conflict of interest while representing the City.
5. Identify all situations in the last five years in which your firm represented a public entity and the decision or outcome was adverse to public entities, either in litigation or administrative matters.
6. If the firm/individual, or any of the attorneys employed by the firm have ever been sued by cities or other clients for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar, please provide information on the nature of the incident, the dates on which the matter began and was concluded, and the results.

J. Compensation and Reimbursement

Please describe how the firm intends to charge for legal services, which may include a flat-rate monthly retainer, an hourly basis, or some other basis.

If hourly rate billing is preferred, please state the hourly rates for the designated City Attorney and Assistant City Attorney and any other attorneys or paralegals assisting such person in providing services, and provide the fee schedule/hourly rates in a table format.

Please define any "extra" services such as litigation, and describe if such services will be billed at a different hourly rate or basis.

The City practices full cost recovery whenever possible. To provide for ease of accounting, the City expects the City Attorney to utilize separate accounts as directed by the City Manager or designee. These accounts currently include each department, each litigation matter, each development project, and each construction project.

Specify which items, if any, are billed separately and at what rate. Such items might include telephone and fax charges, postage, duplicating/printing, out-of-pocket expenses, and mileage/travel time.

Specify if any overhead or administrative charge is added to billings for out-of-pocket costs, subcontractors, or other items.

The City anticipates that the City Attorney Agreement will not have a specific termination date. The Proposer is to include how they propose to be considered for rate increases and at what intervals.

If a flat-rate monthly retainer is included as part of the proposal, it shall be consistent with the following:

The selected City Attorney will be required to provide services under a monthly retainer fee format for regular City Council meetings, special City Council meetings, meetings with staff, communications with the City, and legal work provided under the retainer. Routine travel expenses would be the responsibility of the firm.

Retainer Services

The first _____ hours of Basic Services per month would be billed at a rate of \$_____ per hour for a total monthly retainer of \$_____. If the City does not require this amount of service in a given month, then City shall only be charged for the hours used. The City expects time to be billed in 0.10 hour increments.

Please define which services are included in your proposal for Retainer Services. The rate for Retainer Services above the number of hours set forth above would be \$_____ per hour for the designated City Attorney and designated Assistant City Attorney.

Extra Services

Please define which services are NOT considered part of Retainer Services and which you would consider to be Extra Services or specialized work which would be billed in addition to Retainer Services. The rate for Extra Services would be \$_____ per hour.

If a separate individual or firm is proposed as a subcontractor to Proposer, specify the hourly rates for each type of service to be provided as well as the rates for any items which would be billed separately. Also provide information identified in III.H. of this RFP for the principal attorney(s) who would provide such service(s).

K. Agreement

The successful Proposer is expected to enter into an agreement with the City. Please provide a proposed form of agreement for the services. The successful firm must agree, if awarded a contract, to indemnify and hold harmless the City, its officers, employees, agents, and contractors from any and all claims and losses accruing or resulting to persons engaged in the work contemplated by its proposal or to persons who may be injured or damaged by the firm or its agents in the performance of the services.

The agreement will require that the individual or law firm selected maintain professional errors and omissions insurance, general liability insurance, automobile liability insurance, and workers' compensation insurance. The per occurrence and aggregate amount shall be specified in your response. The City currently has \$5M per occurrence and aggregate for professional liability, \$1M per occurrence and \$2M in aggregate for general liability, and \$1M per accident for automobile insurance. All insurance coverage must be provided by an insurance company authorized to do business in the State of California, and the policy may not be canceled or materially changed without 30 days' prior written notice to the City. The indemnification and hold harmless language and insurance endorsement forms shall conform with and be satisfactory to CJPIA requirements.

Proposer must covenant that it presently has no interest and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested. Proposer must also certify that to the best of its knowledge, no one who has or will have any financial interest under the agreement is an officer or employee of the City.

L. Additional Information

In this section, provide any other information that the Proposer believes is applicable to the evaluation of the proposal or your qualifications for providing the proposed legal services. You may use this section to address those aspects of your services that distinguish your firm from other firms.

IV. REVIEW AND SELECTION PROCESS

A. Process

A committee made up of City representatives will evaluate proposals and conduct interviews with the top Proposer(s). Proposers will be evaluated on the basis of cost, experience, qualifications, and approach to the services requested. The Proposer determined best qualified to perform this service will be recommended to the City Council for contract award.

The City reserves the right to reject any and all proposals for any reason deemed appropriate by the City.

B. Evaluation Criteria

The following information will be considered during the evaluation process:

1. Experience and qualifications identified in the Proposal.
2. Cost of providing services.
3. Complete and clear response to requested matters in the Proposal.
4. Familiarity with laws and regulations governing California municipalities.
5. Adequate local availability, support to staff, and range of services offered.
6. Demonstration of workload capacity and level of experience commensurate with the level of service required by the City.
7. Professional reputation for providing high-quality services and ability to work cooperatively with City staff.
8. Communication skills.
9. Depth and breadth of experience and expertise in the practice of law, most specifically in those areas most often encountered in municipal government operations.
10. Capability to perform legal services promptly and in a manner that permits the City Council and staff to meet established deadlines and to operate in an effective and efficient manner.
11. Degree of availability for quick response to inquiries that arise out of day-to-day operations, questions, or problems

12. Other qualifications/criteria as deemed appropriate by the City Council.

Attachment:

Copy of current City Attorney Agreement with BWS

M:\CITYMGR\City Attorney RFP 2012 April.docx

AGREEMENT FOR CITY ATTORNEY SERVICES

This Agreement is by and between Burke, Williams & Sorensen, a partnership including professional corporations, hereinafter referred to as "Burke, Williams & Sorensen," or "BW&S," and the City of Moorpark, a general law city, hereinafter referred to as "City," is dated and effective as of July 1, 2007 (the "Effective Date") and is made with reference to the following recitals of facts.

RECITALS

A) City desires to continue to retain BW&S to provide legal services and serve as City Attorney to perform the duties and services more particularly set forth below at the rate of compensation set forth below; and

B) BW&S is willing to perform the duties and services of City Attorney as set forth below at the rate of compensation set forth below; and

C) This agreement supercedes and replaces in their entirety, all prior agreements and amendments by and between City and BW&S concerning legal services. All such prior agreements and amendments shall be of no further force and effect.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the parties as follows:

1. Designation of City Attorney.

A. Joseph M. Montes is designated as the City Attorney.

B. Scott E. Porter is designated as the Assistant City Attorney. Any change to the designation of the Assistant City Attorney shall require the written approval of the City Manager. In the absence of the City Attorney, the Assistant City Attorney may act on behalf of the City Attorney.

2. Services. The City Attorney will perform the following services for City upon the request of the City:

A. Retainer Services

(1) Attend all regular meetings of the City Council and adjourned and special meetings of the City Council.

(2) Attend meetings of the Planning Commission.

- (3) Attend other meetings of boards, commissions and committees of the City.
- (4) Provide legal advice and opinions on all matters affecting the City, except when prevented from doing so by a conflict of interest.
- (5) Prepare resolutions and ordinances initiated by the City.
- (6) Prepare or review and certify as to legal form contracts, agreements and other documents between the City and other public or quasi-public entities or initiated by the City.
- (7) Prepare or review and certify as to legal form contracts, agreements and other documents (i) for the acquisition or disposal of services, supplies, equipment or land by the City; or (ii) for public works or projects initiated by the City.
- (8) Prepare or review bond documents. Prior to the initiation of any such work, the City may request from the City Attorney a written statement of the estimated cost of the work.
- (9) Act as general counsel to the Moorpark Redevelopment Agency (MRA).

B. Litigation Services

- (1) Criminal prosecution of violations of City ordinances.
- (2) Represent the City in civil litigation brought on behalf of, or against, the City. Prior to the initiation of any such work, the City may request from the City Attorney a written statement of the estimated cost of the work.

C. Non-retainer Services

- (1) Provide legal services which, by mutual agreement of the City Attorney and City Manager, do not come within the scope of Retainer Services or Litigation Services. Prior to the initiation of any such work, the City may request from the City Attorney a written statement of the estimated cost of the work.

3. Billing Rates and Practices.

- A. All Retainer Services shall be billed to a general retainer account, unless the City Manager directs that a separate account of a service be maintained. A separate account shall be maintained for each Litigation Service and for each Non-retainer Service.**

- B. Services performed by the designated City Attorney and Assistant City Attorney and any services performed by other attorneys from BW&S in fulfillment of the City Attorney's responsibilities shall be compensated in accordance with the rates set forth in Exhibit "A", attached hereto and incorporated herein by reference.
- C. The rates set forth in Exhibit "A" and listed in items A through C may be adjusted each July 1, beginning in 2008. The City Attorney shall notify the City in writing at least forty-five (45) days prior to July 1 of the proposed changes to the rates set forth in Exhibit "A." Any proposed change of five dollars (\$5) per hour or less shall become effective on July 1, unless City notifies the City Attorney in writing prior to July 1 of a rejection of the proposed increase. Any proposed change in excess of five dollars (\$5) per hour, or fifty dollars (\$50) per month for retainer work, in any given year must be requested at least forty-five (45) days prior to July 1 and requires the decision of the City Council to approve, deny, or modify said changes in rates.
- D. Time shall be billed in increments of one-tenth (1/10) of an hour.
- E. City shall be billed for long distance phone calls other than those within Los Angeles and Ventura Counties.
- F. Out-of-pocket expenses, including but not limited to express mail and messenger services, shall be billed at direct cost. The costs of first-class postage shall not be billed to the City.
- G. Duplicating expenses for other than the first copy of the work product prepared by the City Attorney's office, documents placed on the BW&S central word processing system as determined necessary by the City Attorney and documents transmitted to the City by FAX shall be charged at the respective per page rate and hourly rate customarily charged BW&S clients.
- H. Travel time shall not be billed for meetings or appearances held at the Los Angeles and Ventura County offices of BW&S and for regular meetings of the City Council. For all other meetings or appearances, including without limitation, adjourned regular and special meetings of the City Council, travel time shall be billed as set forth in Exhibit "A." Billable travel time shall be shown as a separate entry on the statement in the same manner as other billable services and costs.
- I. In the event of litigation or an issue that affects more than one client of BW&S, the City Manager shall be provided with a written statement of the method by which BW&S proposes to bill for the service. In the event that the City Manager does not accept the proposal, but subsequently requests

that work be done on the matter that was the subject of the proposal, the City shall be billed in accordance with this Agreement.

- J. In the event that it is necessary, in the opinion of the City Attorney or City Council, to retain other legal counsel, the City Attorney shall pay the actual cost of such legal counsel and shall include the actual cost of such legal counsel on the City Attorney's monthly statement, or on a separate invoice (at the direction of the City Manager) for payment by the City. Such legal counsel shall not be retained by the City Attorney without prior written authorization of the City Council.

4. Payment.

- A. BW&S shall submit monthly statements to the City accounting for all services provided and costs incurred pursuant to the terms of this Agreement. Said statements shall clearly set forth by date the type of work performed.
- B. Payments to BW&S shall be made by City within thirty (30) days of receipt of the statement, except for those which are contested or questioned and returned by the City, with written explanation, within thirty (30) days of receipt of the statement. BW&S shall provide to City a written response to any statement contested or questioned and further, upon request of City, provide City with any and all documents related to the service or costs. No charge shall be made for time expended in providing this information to the City.

5. Indemnification.

- A. BW&S shall hold harmless, indemnify and defend the City and its officers, employees, servants and agents from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from misconduct, negligent acts, errors or omissions of BW&S or any of its officers, employees or agents in the performance of this Agreement, except such damage as is caused by the negligence of the City or any of its officers, employees, servants or agents.
- B. The City does not, and shall not, waive any rights that it may have against BW&S by reason of subsection A of this Section 5, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provision of subsection A of this Section 5 shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described in subsection A of this Section 5.

6. Insurance.

- A. BW&S shall secure from a good and responsible company or companies doing insurance business in the State of California, pay for, and maintain in full force and effect for the duration of this Agreement those policies of insurance required by this paragraph and shall furnish to the City Clerk of the City certificates of said insurance on or before the commencement of the term of this Agreement. In the event of cancellation or amendment of any such policy for any reason whatsoever, BW&S shall give notice thereof to City within three (3) business days after BW&S is in receipt of written notice of the cancellation or amendment. BW&S shall give City thirty (30) days written notice to the expiration of any such policy.
- B. Consistent with the provisions in subsection A of this Section 6, BW&S shall provide commercial general liability insurance for bodily injury and property damage, using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent in the total amount of the commercial general liability insurance coverage carried by BW&S, which amount shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate. The policy shall bear an endorsement or have attached a rider whereby the City is named as additional insured with BW&S. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. In the event the amount of commercial general liability insurance provided to another public agency client of BW&S is greater than the amounts stated in this paragraph, this same insurance coverage shall be provided to City. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement, and which is applicable to a given loss, will be available to City.
- C. Consistent with the provisions of subsection A of this Section 6, BW&S shall provide professional liability (errors and omissions) insurance in the total amount of the professional liability insurance coverage carried by BW&S, which amount shall not be less than five million dollars (\$5,000,000) per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. If a Claims Made Basis policy is approved by the City, BW&S shall provide total coverage for any claim that may be filed pursuant to statute or court action after expiration of the Claims Made Basis policy in an amount consistent with the provisions of this paragraph. In the event the amount of professional liability insurance provided to another public agency client of BW&S is greater than the amount stated in this paragraph, this same insurance coverage shall be provided to City. Any insurance proceeds available to City in excess of the limits and

coverage required in this agreement, and which is applicable to a given loss, will be available to City.

- D. Consistent with the provisions of subsection A of this Section 6, BW&S shall provide Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If BW&S owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above.
- E. Consistent with the provisions of subsection A of this Section 6, BW&S shall provide workers' compensation insurance as required by the California Labor Code. If any class of employees engaged by BW&S in work under this Agreement is not protected by the workers' compensation law, BW&S shall provide adequate insurance for the protection of such employees to the satisfaction of the City.
- F. BW&S shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from BW&S's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

7. General Provisions.

- A. BW&S shall not assign this Agreement, or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that BW&S is uniquely qualified to perform the services provided for in this Agreement.
- B. City shall not be called upon to assume any liability for the direct payment of any salary, wage or other compensation to any person employed by BW&S performing services hereunder for City.
- C. BW&S is and shall at all times remain as to the City a wholly independent contractor. Neither the City nor any of its officers, employees, servants or agents shall have control over the conduct of BW&S or any of BW&S's officers, employees or agents. BW&S shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of the City.

- D. In the performance of this Agreement, BW&S shall not engage in discrimination in employment of persons because of the age, race, color, sex, national origin or ancestry or religion of such persons.
- E. Nothing contained in this Agreement shall be deemed, construed or represented by the City or BW&S to any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the City and BW&S.
- F. Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

TO: City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021
Attention: City Manager

TO: Burke, Williams & Sorensen
611 West Sixth Street, Suite 2500
Los Angeles, California 90017-3102
Attention: Joseph M. Montes

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

- G. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.
- H. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.
- I. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same

provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

- J. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.
- K. Cases involving a dispute between the City and BW&S may be decided by an arbitrator, if both parties agree in writing, with costs proportional to the judgment of the arbitrator.
- L. This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California.
- M. The captions and headings of the various sections and subsections of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective sections and subsections hereof.

8. Terms.

- A. This Agreement shall remain in effect until amended or terminated.
- B. This Agreement and all legal services to be rendered under it may be terminated at any time upon thirty (30) days written notice from either party with or without cause. In the event of such termination, BW&S shall be paid for all services performed and costs incurred before the effective date of said termination.
- C. In the event of termination of the Agreement, BW&S shall provide City, at City's request and cost, copies of work product prepared by, or on behalf of, BW&S to this Agreement and copies of any document obtained by BW&S pursuant to this Agreement.

9. Additional Representation.

- A. The City Attorney is hereby designated as the General Counsel to the Moorpark Redevelopment Agency, as well as any and all other presently existing authorities, districts, agencies or joint powers associations formed

by the City or the Moorpark Redevelopment Agency. Additionally, the City Attorney shall be General Counsel to any such authorities, districts, agencies or joint powers associations formed by the City or the Moorpark Redevelopment Agency in the future, unless otherwise determined by the Moorpark City Council or Moorpark Redevelopment Agency Board.

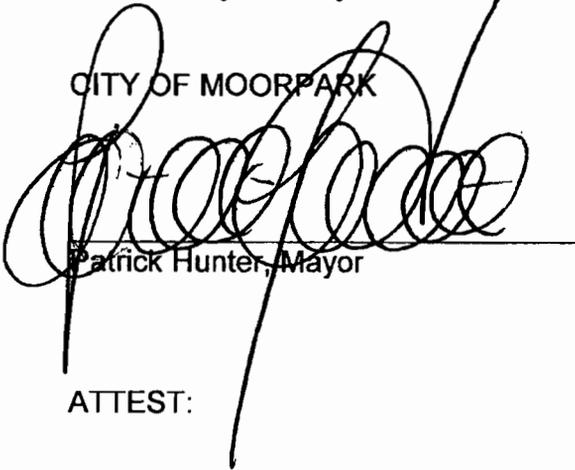
10. Conflicts of Interest

- A. BW&S represents that neither BW&S nor any of the attorneys or other persons employed by BW&S have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of CITY that may be affected by the services to be provided to CITY pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public. BW&S further agrees that no attorney or other person having any such interest will be employed by BW&S while this Agreement remains in effect. If BW&S or an attorney or other person employed by BW&S acquires such an interest while this Agreement remains in effect, BW&S will immediately disclose such interest to CITY's Representative, and the interested individual will not participate in or influence the performance of the services to be provided to CITY pursuant to this Agreement. Additionally, except for services currently provided to other Ventura County cities (which include city attorney services for the City of Camarillo and labor and employment services for the Cities of Port Hueneme and Oxnard), BW&S agrees to advise the City Manager prior to undertaking any representation of other Ventura County public entities so that CITY may evaluate whether or not the contemplated representation may present a conflict of interest.

- B. In addition to the requirements regarding conflicts of interest imposed on attorneys by the California Business and Professions Code, and by Rule 3-310 of the California Rules of Professional Conduct, BW&S agrees that neither BW&S nor any attorney employed by BW&S will represent clients before any board, commission, committee or department of CITY, or represent a client adverse to CITY for a period of one year from the date of the completion of the services to be provided to CITY pursuant to this Agreement or the early termination of such services in the manner hereinafter provided by this Agreement. The provisions of this paragraph may be waived by the written consent of the City Manager.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the duly authorized officers the day and year first above written.

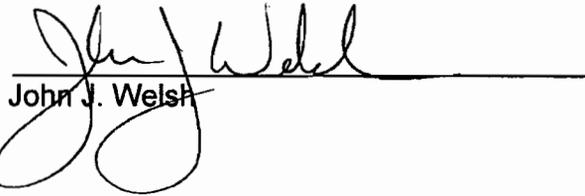
CITY OF MOORPARK


Patrick Hunter, Mayor

BURKE, WILLIAMS & SORENSEN


Joseph M. Montes

ATTEST:


John J. Welsh


Deborah S. Traffenstedt, City Clerk

(SEAL)



EXHIBIT "A"

A. General Retainer Rate.

The rate for the first ten (10) hours of time billed to the general retainer account, irrespective of the attorney who performed the work, shall be \$1,350 (now \$1,400).

B. City Attorney and Assistant City Attorney Rates.

The rate for the City Attorney and Assistant City Attorney shall be \$185 (now \$190) per hour for Services performed under this Agreement.

C. Other Rates.

The hourly rate, for attorneys based on the number of years admitted to the bar, shall be as follows, irrespective of whether the Service is Retainer, Litigation or Non-retainer:

				Eff 7/1/08
Partners	-	25 years or more	\$245	\$250
	-	15 to 25 years	\$225	\$230
	-	14 years or less	\$215	\$220
Associates	-	5th year or more	\$195	\$200
	-	4th year	\$185	\$190
	-	3rd year	\$180	\$185
	-	2nd year	\$175	\$180
	-	1st year	\$165	\$170
Paralegal			\$100	\$105

D. Billable Travel Time.

Portal-to-portal (round trip) travel time between the BW&S Ventura County offices in Camarillo and the Moorpark City Hall shall be billed as .9 hours and between the BW&S Ventura County offices in Camarillo and the Ventura County Government Center shall be billed as .8 hours.