

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Steven Kueny, City Manager 

DATE: June 12, 2007 (CC Meeting of June 20, 2007)

SUBJECT: Consider Approval of Revised Agreement for City Attorney Services

BACKGROUND

The Agreement for City Attorney Services (Agreement) with Burke, Williams & Sorensen (BW&S) was revised in March 2004. Section 3.C. of the Agreement provides that the billing rates may be increased by up to \$5.00 per hour if requested by the City Attorney and the City does not reject such request. In May 2005, the City Attorney requested a \$5.00 per hour increase, the City did not reject it, and it went into effect July 1, 2005. In May 2006, the City Attorney requested elimination of the Retainer provision of the Agreement. At that time, the Retainer provided for 20 hours of service for \$2,500.00. This provided for an effective hourly rate of \$125.00 rather than their \$175.00 hourly rate for the City Attorney or designated Assistant City Attorney. The City and City Attorney ultimately agreed upon a monthly rate of \$1,300.00 for the Retainer consisting of ten (10) hours. This was approved by the City Council as an Addendum to the Agreement on August 16, 2006, with an effective date of July 1, 2006.

DISCUSSION

Section 3.C. of the Agreement should be amended to allow a proposed change of Fifty Dollars (\$50.00) per month to the Retainer to become effective on July 1, unless the City notifies the City Attorney in writing prior to July 1 of a rejection of the proposed increase. When the Council agreed to the change in the monthly Retainer rate in August 2006, the revised language did not include a clear process on how the Retainer rate could be increased. Revised language in Section 3.C. is proposed to provide such process. Exhibit "A" has been updated to show the rates to be effective July 1, 2007. Other proposed changes are as follows:

- 1) Section 1.B. lists Scott E. Porter as the designated Assistant City Attorney;
- 2) Section 10.A. requires the City Attorney to notify the City Manager prior to undertaking any representation of other Ventura County public entities (other than those currently identified) so City may evaluate if such representation may present a conflict of interest.

It is recommended that the City Council approve a revised Agreement with the modifications as presented in this report.

STAFF RECOMMENDATION

Authorize the Mayor to execute an Agreement for City Attorney Services with Burke, Williams & Sorensen, with final language approval by the City Manager.

SK:db

Attachments:

- 1) May 16, 2007, Letter from City Attorney
- 2) Agreement for City Attorney Services with attached Exhibit "A", Revised July 1, 2007

444 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
voice 213.236.0600 - fax 213.236.2700
www.bwsllaw.com

Attachment 1)

BURKE, WILLIAMS & SORENSEN, LLP

Writer's Direct Dial:
213-236-2736
Our File No:
01359-0001
jmontes@bwsllaw.com

May 16, 2007

VIA FACSIMILE AND U.S. MAIL

Steven Kueny
City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

Re: Agreement for City Attorney Services

Dear Steve:

Pursuant to paragraph 3.C. of the Agreement for City Attorney Services entered into by and between BWS and the City, I am requesting that the rates set forth in Exhibit "A" be increased by five dollars per hour. This would increase the retainer to \$1,350, the range of Associate rates for 2007-08 to \$165 to \$195 and the range of partner rates to \$215 to \$245. The City Attorney and Assistant City Attorney rate would be \$185.

I am happy to discuss the above with you at your convenience. Thank you for your consideration of this request.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP



Joseph M. Montes

cc: Deborah Traffenstedt, City Clerk

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

BURKE, WILLIAMS & SORENSEN

Patrick Hunter, Mayor

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.

B. City Attorney and Assistant City Attorney Rates.

The rate for the City Attorney and Assistant City Attorney shall be \$185 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:

Partners	-	25 years or more	\$245
	-	15 to 25 years	\$225
	-	14 years or less	\$215
Associates	-	5th year or more	\$195
	-	4th year	\$185
	-	3rd year	\$180
	-	2nd year	\$175
	-	1st year	\$165
Paralegal			\$100

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.