



**Agenda Item A.1**  
**DISCUSSION/ACTION ITEM**  
**Meeting Date: July 28, 2008**

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**TO:** Mayor and Councilmembers

**FROM:** Daniel Singer, City Manager  
Michelle Greene, Administrative Services Director

**SUBJECT:** Approval of an Agreement for Employment of City Attorney

**RECOMMENDATION:**

Approve the proposed Agreement for Employment of City Attorney and direct staff to circulate it for signature.

**BACKGROUND:**

On October 15, 2007, the City Council directed staff to initiate a multi-phased recruitment effort for both in-house and contract City Attorney services. As a result of the City's recruitment efforts, a total of eight proposals by public-sector law firms throughout California were received. In addition, a total of eight employment applications were received from individuals interested in a potential in-house City Attorney position.

On February 5, 2008, the City Council created an ad-hoc sub-committee to review the applications and proposals submitted and to discuss the assessment and selection process. Councilmembers Blois and Onnen were appointed to serve in this advisory role. The subcommittee met on February 21<sup>st</sup> to discuss the evaluation process and determined that they wanted to first assess the candidates for the in-house City Attorney position while simultaneously conducting an analysis of the potential costs associated with this position as compared to contract City Attorney costs. Staff was directed to begin this cost analysis and to move forward with the interview process. The subcommittee met again on February 29<sup>th</sup> to identify candidates that they wanted to interview and to review staff's cost analysis.

On March 18, 2008, a presentation was delivered to the Council at their regular meeting which contained a cost analysis of in-house vs. contract legal services. At that time, Council directed staff to provide further information.

On March 20<sup>th</sup> and 24<sup>th</sup>, 2008, initial interviews with the selected in-house candidates were conducted by the sub-committee appointees, the City Manager, and Administrative Services Director. Second interviews before the entire City Council were

conducted on April 11<sup>th</sup>. Representatives from the City's management team also met informally with the candidates on that day.

On May 6, 2008, at their regular meeting, the City Council received a presentation by staff which provided further cost analysis of an in-house legal services department as well as a comparison of the costs associated with the City's prior legal experience. After review of this analysis, Council voted to move forward with the concept of in-house attorney services and to move on to the next step of fully evaluating and making an offer of employment to the appropriate candidate for the position.

**DISCUSSION:**

On July 15, 2008 the City Council voted in closed session to appoint Tim Giles to the position of City Attorney, subject to the completion of a formal employment agreement. The agreement is presented at this time for your review and approval (Attachment 1).

**ALTERNATIVES:**

The City Council may choose to provide direction to staff regarding changes to the proposed Agreement for Employment of a City Attorney.

Submitted By:

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Michelle Greene  
Administrative Services Director

**ATTACHMENT:**

1. Agreement for Employment of City Attorney.

**AGREEMENT FOR EMPLOYMENT OF CITY ATTORNEY**

The Agreement is made and entered into the \_\_\_ day of \_\_\_\_\_, 2008, by and between the CITY OF GOLETA (the "CITY"), a General Law City, and TIM W. GILES ("GILES" or "City Attorney.") The agreement (the "Agreement") shall have an effective date of July 28, 2008. In consideration for the mutual covenants contained herein, the parties agree as follows:

**SECTION I. EMPLOYMENT:**

**A. Appointment of City Attorney.**

**1. Appointment.**

The City Council of the CITY OF GOLETA hereby appoints GILES to the position of City Attorney, effective August 25, 2008, ("Commencement Date") to perform the functions and duties specified under the laws of the State of California, the Municipal Code of the CITY, and the Ordinances and Resolutions of the CITY, and to perform such other duties and functions as the City Council shall from time to time assign. GILES shall serve at the pleasure of the City Council, and therefore, has no property interest in continuing employment.

**2. Commencement of Duties.**

Effective upon the execution of this agreement, an attorney client relationship shall be deemed to exist between GILES and CITY which relationship shall be subject to all of the legal and ethical obligations of such a relationship. GILES will use his best efforts to be available prior to his appointment date at the request of the City Council for transition purposes. GILES shall commence his duties as City Attorney effective on the commencement date which relationship shall be subject to all obligations specified herein.

**B. Term of Agreement.**

**1. Term.**

The term of the Agreement, unless terminated earlier as provided in Section V below, shall be for a period of three (3) years, commencing on the Commencement Date. On or before August 25, 2010, the second anniversary of the Commencement Date, City shall advise GILES of its intent to either renew this agreement, and for what period of time, or of CITY'S intent to allow this contract to expire on August 25, 2011.

**2. Right to Terminate.**

Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the Agreement at any time, or the right of GILES to resign at any time from his position, as set forth below.

**SECTION II. POWERS, DUTIES, AND RESPONSIBILITIES:**

**A. Employment Duties.**

GILES shall function as the City Attorney of the CITY and shall be vested with the powers, duties, and responsibilities set forth in Chapter 2.16, Sections 2.16.010, 2.16.020 and 2.16.03 of the Goleta Municipal Code, the terms of which are incorporated by reference herein. In addition, GILES shall perform such other duties as may be assigned by the City Council, and which are consistent with the position of City Attorney, without additional compensation.

**B. Hours of Work.**

City Attorney is expected to devote necessary time outside normal office hours to conduct business of the CITY. Additionally, it is expected that City Attorney shall be required to conduct business of the CITY away from City Hall. To that end, the City Attorney shall be allowed flexibility in setting his own office hours, subject to approval of the City Council.

The City Attorney shall advise the City Council (or its designee) if he plans to take any leave for more than a partial day. The City Attorney shall use the appropriate leave granted to him for any such leave.

**C. Outside Professional Activities.**

The City Attorney agrees to devote his productive time, ability, and attention to the CITY's business during the term of the Agreement. City Attorney may, however, undertake limited outside activities, including (a) volunteer professional development activities, including California League of Cities and the Tri-Counties Local Government Lawyers Association, (b) volunteer activities, (c) teaching, subject to City Council approval, (d) providing legal services to any individual or entity other than the City of Goleta, and/or (e) other related activities, provided that such activities do not in any way interfere, conflict with or adversely affect his employment as City Attorney or the performance of his duties as provided herein.

**SECTION III. COMPENSATION OF CITY ATTORNEY**

**A. Salary.**

GILES shall be employed at an annual salary of \$160,000.00. The salary will be paid in increments as established from time to time for all CITY employees.

**B. Salary Adjustments.**

**1. Annual Cost of Living Increases.**

The City Attorney shall be entitled to any annual cost of living increase granted across the board to other City employees as authorized by the annual budget resolution without the need for a separate amendment to this agreement.

**2. Annual Salary Review.**

The City shall review the salary of the City Attorney annually in conjunction with his performance review and shall consider annual salary increases that, if approved, shall commence on August 25 of each annual renewal year (the "annual renewal date.") Such annual salary review may include both consideration of merit increase based on performance review and market equity based on a salary survey of other full time employed City Attorneys in similarly situated cities of a similar size. In the event the City Attorney's annual salary review is delayed past the annual renewal date of any year, any salary increase subsequently granted under this provision shall apply prospectively from the date of approval of the increase. In the event that such a delay in salary review occurs, the City Council may add a one time salary adjustment to compensate for any increased amount that would otherwise have been due had the salary review occurred in a timely manner for the period between the annual renewal date and the approval of the annual increase.

**3. Decrease in Salary.**

In the event that the CITY, at any time during the term of the Agreement, reduces the salary or other financial benefits of City Attorney in a greater percentage than an applicable across-the-board reduction for all employees of the CITY, then, the City Attorney may, at his option, be deemed to be "terminated" by the City Council within the meaning of Section V of the Agreement as of the date of such reduction or refusal to comply.

**C. Vacation, Holiday, Sick Leave, Compensatory Time and Other Benefits.**

**1. Vacation.**

The City Attorney shall be vested with five (5) working days of vacation effective upon employment. The City Attorney shall receive three (3) weeks (15 working days) vacation per year accrued in the same manner as other management personnel. City Attorney shall begin accruing vacation time upon commencement of employment.

**2. Sick Leave.**

The City Attorney shall accrue the equivalent of twelve (12) days sick leave per year which will be earned at the rate of one (1) day per month and will have no accrual limitation.

**3. Holidays.**

The City Attorney may celebrate the same holidays as celebrated by CITY, which currently include:

1. January 1 (New Year's Day)
2. Third Monday in January (Martin Luther King's Birthday)
3. Third Monday in February (President's Day)
4. The last Monday in May (Memorial Day)
5. July 4 (Independence Day)
6. The First Monday in September (Labor Day)
7. November 11 (Veterans Day)
8. Thanksgiving
9. Friday after Thanksgiving
10. December 25 (Christmas)
11. One (1) Floating Holiday

**4. City Attorney Management Leave.**

The City Attorney shall be vested with ten (10) working days of Management Leave effective upon employment. Thereafter, GILES shall be allotted the equivalent of ten (10) working days of Management Leave which shall be deemed earned on July 1 of each calendar year. Management Leave not used by June 30 of each calendar year shall not be converted, carried over or cashed out, and shall be eliminated.

**5. Automobile Allowance.**

The City Attorney shall be paid an allowance of \$700.00 per month as compensation for all automobile and mileage costs that may be incurred in the performance of City Attorney's duties.

**6. Health, Dental and Vision.**

The City Attorney shall be provided the same health, dental, and vision coverage that is presently or hereafter provided other management employees covering the City Attorney and all dependent family members. The CITY shall pay the same flexible benefit allowance as paid to other management personnel.

**7. Retirement.**

The CITY shall pay the City Attorney's contribution to the Public Employees Retirement System ("PERS") with the 2% at 55 Retirement Plan based on single highest year compensation. This shall include both the employer's share and the employee's share of the contribution.

**8. Deferred Compensation.**

The City shall pay to City Attorney \$8,000 per year in semi-monthly installments as deferred compensation to a 401(a) or 457(b) account administered by ICMA/RC. The City shall pay reasonable set-up fees for such a plan.

**9. Life Insurance and Long Term Disability Insurance**

The CITY shall pay 100% of the premium for Term Life Insurance for the City Attorney with a benefit equal to one year's salary together with 100% of the premium for Long-term Disability Insurance as provided for all other management personnel.

**10. Associations and Subscriptions.**

Subject to City Council approval, the CITY shall budget and pay for the professional dues and subscriptions of the City Attorney reasonably necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional growth and advancement, including, but not limited to, the State Bar of California, the Santa Barbara County Bar Association, the International Municipal Lawyers Association, and the Tri-Counties Local Government Lawyers Association.

**11. Professional Development.**

Subject to City Council approval, the CITY shall budget for and pay the travel and subsistence expenses of the City Attorney for reasonable professional official travel, meetings, and occasions adequate to continue the reasonable professional development of the City Attorney and to adequately pursue necessary official and other functions for the CITY. This may include national, regional, state, and local governmental groups and committees thereof of which the City Attorney may serve as a member including, but not limited to, the annual League of California Cities Conference, the annual League of California Cities City Attorneys Conference and IMLA Conferences and monthly meetings of the Tri-Counties Local Government Lawyers Association. This shall include costs reasonably incurred by GILES for Mandatory Continuing Legal Education programs required by the State Bar of California or for maintaining professional competence necessary to perform the duties of City Attorney.

**12. Reimbursement Expenses.**

The City Attorney will receive reimbursement for all sums necessarily incurred and paid by him in the performance of his duties. The City Attorney shall submit a claim form to the CITY in the form and manner required by the Goleta Municipal Code.

**13. Jury Duty.**

The City Attorney will receive full pay and benefits while serving on a trial jury. Any compensation for such jury duty (except travel pay) shall be returned to the CITY.

**14. Business Equipment Allowance.**

The City Attorney shall receive \$150 monthly to cover the cost of personal telephone charges, personal computer usage and home office usage incurred on City business.

**15. Other Benefits.**

The City Attorney shall be entitled to all other benefits afforded all other employees of the City and all other benefits afforded to all Executive Management employees.

**D. Moving and Relocation Expenses.**

CITY shall pay, one time only, the City Attorney's reasonable moving expenses for ordinary household items based upon the lowest of three competitive bids submitted by GILES to CITY, in an amount not to exceed \$10,000.00.

**E. Indemnification.**

The CITY shall defend, hold harmless, and indemnify the City Attorney against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring during GILES' tenure and in the course and scope of his duty as City Attorney, including, without limitation, claims arising out of personnel actions taken by City Attorney. The CITY shall defend, compromise and settle any such claim or suit, and shall pay the amount of any settlement or judgment rendered thereon, to the extent permitted by law.

**E. Bonding.**

The CITY shall bear the full cost of any fidelity or other bonds required of the City Attorney under any law or ordinance.

**SECTION IV. PERFORMANCE EVALUATION.**

**A. Setting of Goals and Objectives.**

Within ninety (90) days of the Commencement Date, the City Council shall set forth for GILES, in writing, the performance goals and objectives, and the priorities for those goals and objectives, for the City Attorney position. These goals, objectives and priorities may be re-evaluated, changed and/or modified by the City Council as necessary. Any changes, modification or revision to the original goals will be updated in writing and provided to the City Attorney.

The goals, objectives and priorities will be evaluated annually in conjunction with the City Attorney's annual performance evaluation.



**B. Written Summary.**

The City Council shall provide the City Attorney with a written performance evaluation on or about the anniversary of the Commencement Date. The City Council shall also provide opportunity for the City Attorney to discuss his evaluation with the City Council in closed session.

**C. Closed Session Review.**

The City Council will cause to be placed on the City Council agenda for each year, on or about the anniversary of the Commencement Date, a "closed session" for the purpose of the performance evaluation.

**D. Initial Performance Review.**

At the end of the City Attorney's first six months of employment with the CITY, the City Council will conduct a performance evaluation predicated on goals and objectives to be established by the City Council, within the first three (3) months of employment. City Council will review the annual salary of the City Attorney at the time of the initial performance evaluation and may consider a merit increase if warranted by such performance evaluation.

**SECTION V. TERMINATION OF EMPLOYMENT.**

**A. Termination by Council.**

The City Council may terminate this Agreement with or without cause at the option of the City Council upon ten (10) working days' written notice in accord with the terms of this section.

**B. Termination without Cause/Severance.**

If the CITY terminates City Attorney without cause within the first twelve (12) months of employment, then City Attorney shall be entitled to a lump sum severance payment equal to six (6) months' base salary, together with all accumulated management leave and vacation time.

City Attorney shall accrue an additional month of severance for each full year of employment he completes with the City, commencing on the first anniversary of the Commencement Date, up to a maximum of nine (9) months.

The following severance schedule applies:

- |                       |  |
|-----------------------|--|
| 08/25/09 – 08/25/2010 | City Attorney shall be eligible for seven (7) month's salary |
| 08/25/10 – 08/25/2011 | City Attorney shall be eligible for eight (8) month's salary |

Upon termination, CITY will cash out the Management Leave, Vacation Leave and Sick Leave pursuant to City policy. The lump sum severance payment will be reduced by applicable federal and state taxes, employment taxes. The severance pay will be excluded from retirement deductions and from any calculations of retirement benefits.

**C. Request for Resignation.**

If a majority of the City Council requests the resignation of City Attorney, then City Attorney may, at his option, deem himself terminated within the meaning of Section V (A.)

**D. Termination with Cause**

City may terminate City Attorney for cause. Cause shall include, but not be limited to the following:

1. Refusal to perform the duties of the City Attorney as set forth in the Goleta Municipal Code or as may otherwise be assigned, pursuant to the provisions of Sections I(A)(1) and II(A);
2. Violation of state or federal law exposing the City to liability;
3. Malfeasance, nonfeasance, incompetency, and/or any conduct which is in conflict with any interest of the City;
4. The inability to practice law in the State of California due to any action by the State Bar Association.

In the event that the City Attorney is terminated for Cause, no severance pay will be due to the City Attorney.

**E. Voluntary Termination.**

The City Attorney may terminate the Agreement by giving the CITY sixty (60) days' written notice of resignation in advance of termination, at the end of which period the Agreement will terminate, unless the CITY and City Attorney otherwise agree. Upon termination, whether voluntary or otherwise, City Attorney shall be paid for all accrued, but unused, Vacation Leave and Management Leave at his then current rate of pay.

**F. Full Hourly Rate.**

As used in the Agreement the term "full hourly rate" or "hourly rate" will mean City Attorney's salary multiplied by 12 and divided by 2080, i.e., the starting salary in the Agreement is the amount of \$160,000 per annum would be divided by 2080 to equal a base hourly salary of \$76.92.

**SECTION VI. MISCELLANEOUS PROVISIONS:**

**A. Arbitration.**

Any controversy or claim arising out of or pertaining to this Agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be enforced as provided by California law and shall constitute Employee's sole remedy for any claim arising out of his employment relationship with the City.

**B. Entire Integrated Agreement.**

The text herein shall constitute the entire Agreement between the parties, and supersedes all prior oral and written agreements or understandings.

**C. Notices.**

Notices pursuant to the Agreement shall be in writing given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) CITY OF GOLETA  
130 Cremona Drive, Suite B  
Goleta, California 93117  
Attention: Mayor
  
- (2) CITY ATTORNEY  
TIM W. GILES  
9419 Hollister Street  
Ventura, California 93004.

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the third day following the date of deposit of such written notice in the course of transmission in the United States Postal Service, with postage fully prepaid.

**D. Heirs and Executors.**

This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of City Attorney.

**E. Severability.**

If any provision, or portion thereof, contained in the Agreement is held unconstitutional, invalid or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**F. Legal Fees.**

In the event that either party to the Agreement brings a lawsuit to enforce or interpret any provisions of the Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and related expenses and costs.

**G. Governing Law.**

The Agreement shall be governed by the laws of the State of California.

**H. Interpretation of Agreement.**

The parties agree that any ambiguity in the Agreement shall not be construed or interpreted against, or in favor of either party.

**I. Amendment.**

The Agreement contains the full agreement of the parties. Any modification or change in the Agreement shall not be binding on either party unless such change or modification is in writing and signed by both parties.

IN WITNESS WHEREOF, the CITY has caused the Agreement to be signed and executed in its behalf by its Mayor and duly attested to by its City Clerk, and the City Attorney has signed and executed the Agreement, both in duplicate, the day and year first above written.

**CITY ATTORNEY**

**CITY OF GOLETA**

\_\_\_\_\_  
Tim W. Giles

\_\_\_\_\_  
Michael T. Bennett, Mayor

**APPROVED AS TO FORM:**

**ATTEST:**

\_\_\_\_\_  
LIEBERT CASSIDY WHITMORE

\_\_\_\_\_  
Deborah Constantino, City Clerk

**APPROVED AS TO  
ADMINISTRATION:**

\_\_\_\_\_  
Dan Singer, City Manager