



**TO:** Mayor and Councilmembers

**FROM:** Daniel Singer, City Manager  
Tim W. Giles, City Attorney

**SUBJECT:** Contract Attorney Services and Engagement Letter

**RECOMMENDATION:**

Authorize the City Attorney to execute the attached engagement letter for special legal services with Burke, Williams & Sorensen.

**BACKGROUND:**

As a part of the evaluation of in-house versus contract legal services, it was communicated that should the City Council choose to pursue an in-house attorney, contract services, especially in the area of litigation, would be necessary. Since Burke, Williams & Sorensen (BWS) has been representing the City of Goleta in the areas of litigation and special counsel it is appropriate and sensible to continue to work with them on existing cases and projects, under the direction of the City Attorney. Utilizing BWS's familiarity and experience with the City's current legal projects will represent a substantial savings over retaining new special counsel for current legal services.

BWS is currently under a contract with the City to provide legal services, but the contract is specific to acting as the City Attorney. This engagement letter will replace and supersede the existing contract. For this reason, the engagement letter is being brought to the City Council for consideration. As has been past practice, staff may retain other law firms to provide legal services to the City when it is in the best interest of the City to do so.

**DISCUSSION:**

The attached Engagement Letter with BWS constitutes a new agreement for services based on the City's desire to contract out certain legal services under the direction of the City Attorney.

The Engagement Letter represents a similar contractual relationship to the one the City has been enjoying with BWS, with two key exceptions. The first is the responsibility the

City will have to pay for some travel time, limited to a maximum of two hours per trip (one hour each direction of travel). Under the existing contract the City was only paying the mileage reimbursement for travel to and from City Hall. The second exception is the increase in rates for senior attorneys from the current \$245 per hour to \$275 per hour. All other rates stay the same and are guaranteed until July of 2009. In reviewing some of the many proposals the City received for contractual legal services back in January it would appear that the \$275 rate, while somewhat on the high side, is not out of range for specialized legal services, especially in the area of litigation services.

**ALTERNATIVES:**

If Council does not wish to pursue the attached Engagement Letter with BWS at this time, the following alternatives may be considered:

1. Council could ask staff to renegotiate the contract and either execute or return with a different agreement.
2. Council could review the proposals for contract services the City received in January 2008 as a part of the City Attorney selection process.
3. Council could invite other legal firms to submit proposals to the City for special legal services.

Taking any of these actions could leave the City without litigation services for a certain period of time unless BWS was willing to continue to serve the City on a month-to-month basis at existing hourly rates.

**FISCAL IMPACTS:**

This action would increase the hourly rate of specialized legal services to the City, but enhanced management and coordination of services under the direction of the City Attorney should allow the City to remain within budget.

Submitted By:

Reviewed By:

Approved By:

\_\_\_\_\_  
Tim W. Giles  
City Attorney

\_\_\_\_\_  
Michelle Greene  
Administrative Services  
Director

\_\_\_\_\_  
Daniel Singer  
City Manager

**Attachment:**

1. Proposed Engagement Letter for Special Legal Services with Burke, Williams & Sorensen.

## **ATTACHMENT 1**

**Proposed Engagement Letter for Special Legal Services  
with Burke, Williams & Sorensen**

August 27, 2008

**VIA FACSIMILE & REGULAR MAIL**

Tim W. Giles, City Attorney  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

Re: Legal Representation - Engagement Agreement

Dear Tim:

Thank you so much for giving our firm the opportunity to act as special legal counsel to the City ("City") with regard to legal issues and litigation that may arise from time to time where the City needs outside assistance. Burke, Williams & Sorensen (the "Firm") is pleased to provide any necessary legal services whenever called upon to do so by you on the following terms and conditions.

**SCOPE OF SERVICES**

The Firm shall perform such legal services as may be necessary to serve the City with regard to any legal matters as may be directed by the City Attorney or the City Manager in the City Attorney's absence.

**ATTORNEYS**

Julie Hayward Biggs and Brian Pierik will be the primary attorneys coordinating legal services for the City as to all matters that are referred to the Firm. All members of the Firm, however, will be available on an as needed basis to assist in matters related to the City, upon consultation with the City Attorney.

**COMPENSATION**

General legal services provided by Ms. Biggs and Mr. Pierik shall be compensated at the rate of \$275 per hour. All other attorneys working on matters for the City shall be compensated at the rate of \$275 for partners, \$225 for income partners, and \$205 for associates in the firm. Paralegals shall be compensated at the rate of \$125. These rates shall be in effect until July 1, 2009 when they are subject to adjustment in accord with firm policies and the approval of the City Manager.

The Firm shall provide the City with an itemized scope of services and estimate of the costs of each litigation case or other legal services project. Any additional services or substantial increase in costs beyond the estimate shall be communicated to and approved by the City in advance of the work being performed.

### **ADDITIONAL FINANCIAL ISSUES**

A. Costs and Expenses. In addition to its legal fees, the Firm may incur various costs and expenses in performing legal services under this letter agreement. The City agrees to pay for those costs and expenses in addition to the hourly fees. The costs and expenses commonly incurred include fees fixed by law or assessed by public agencies, long distance telephone calls, two hours roundtrip travel time to and from the City as needed, mileage, messenger and other delivery fees (which will not be incurred without advance approval), postage, parking and other travel expenses, photocopying and other reproduction costs, and other similar items.

B. Billings. The firm will bill the City directly for its legal services, costs and expenses on a monthly basis. The City agrees that each such bill will be paid in full within 45 days of receipt.

### **POTENTIAL CONFLICTS OF INTEREST**

We know of no conflicts of interest that would preclude the Firm from representing the City on any matter that may come before it. Nevertheless, the firm represents a wide variety of clients, including private individuals, businesses and other entities, and from time to time conflicts may arise that require disclosure to the City or disqualification of the Firm from representing either the City or the other client or both.

We are not permitted, nor would we consider, representing another client in any matter that is potentially adverse to the City. It is possible, however, that we may represent clients that may have issues relating to the City on matters that are unrelated to the City. For example, we might provide employment and labor advice to a national retail business that at some time in the future may be involved in some way with the City. In such a case, our representation of that company would be disclosed to the City at the earliest opportunity and the City would then need to evaluate whether it views that representation as in conflict with our representation of the City. Should the City find our representation of such a client objectionable, the City retains the ability to terminate our services or refer any matters that may be at issue to another attorney or law firm.

In order to facilitate resolution of any potential conflict of interest that may arise in the future, the City authorizes its attorney to review and evaluate potential conflicts of

interest that may arise and to take appropriate action to waive or acknowledge and accept continued representation by the Firm consistent with the Rules of Professional Conduct and California law.

The firm shall not be required to perform the services described above where to do so would be a conflict of interest pursuant to the State Bar Act.

### TERM

The term of this Agreement shall commence on September 1, 2008, and shall continue thereafter unless amended or terminated pursuant to the terms of this Agreement.

The City may discharge the Firm at any time by written notice effective when received by the Firm. The Firm will provide no further services and advance no further costs on behalf of the City after receipt of the notice, unless specifically agreed to by the City. The Firm may withdraw from this engagement with the consent of the City or for good cause. Good cause may include the City's breach of this letter agreement, refusal to cooperate with the Firm, or any fact or circumstance that would render the Firm's continuing representation unlawful or unethical.

Notwithstanding the discharge or withdrawal of the Firm, the City will remain obligated to pay the Firm for all legal services rendered, costs and expenses under this letter agreement and to reimburse the Firm for all costs incurred prior to its termination.

In accordance with Business and Professions Code § 7149(a)(4), the City is hereby informed that the Firm maintains errors and omissions insurance coverage applicable to the services to be rendered under this Agreement.

### INSURANCE

BWS agrees to take out and maintain in full force and effect under the terms of this Agreement the following insurance coverage:

- A. Such insurance coverage as is required pursuant to the Workers' Compensation Laws of the State of California; and
- B. A liability policy with coverage of not less than \$1,000,000.
- C. Professional Liability (errors and omissions) insurance in an amount of not less than \$5,000,000.00

**NOTICES**

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same to the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

CITY: Tim W. Giles, City Attorney  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

THE FIRM: Burke, Williams & Sorensen  
2280 Market Street, Suite 300  
Riverside, CA 92501  
Attention: Julie Hayward Biggs, Esq.

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notices given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. 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.

**GENERAL PROVISIONS**

A. The Firm shall not assign this Agreement, or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that the Firm is uniquely qualified to perform the services provided for in this Agreement.

B. The Firm 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 the Firm or any of the Firm's officers, employees or agents. The Firm 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. City acknowledges and agrees that the attorneys representing the City will need to represent to others their capacity and relationship to the City.

C. In the performance of this Agreement, the Firm 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.

D. Nothing contained in this Agreement shall be deemed, construed or represented by the City or the Firm 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 the Firm other than attorney and client.

E. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings 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.

F. 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.

G. 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.

H. This Agreement may be modified by the mutual consent of the City Attorney and the Firm to adjust for costs, fees, services or other matters other than termination at any time.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their representatives as follows:

**BURKE, WILLIAMS & SORENSEN, LLP**  
a Limited Liability Partnership

By \_\_\_\_\_  
JULIE HAYWARD BIGGS  
of BURKE, WILLIAMS & SORENSEN, LLP



Tim Giles  
City of Goleta  
Wednesday, August 27, 2008  
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Acknowledged and agreed to:

CITY OF GOLETA

By: \_\_\_\_\_