

## Appendix B

# **A Policy Guide for Law Firms Providing Legal Services to The City of Benicia**

The City Attorney's Office for the City of Benicia has prepared this guide to assist law firms handling legal matters for the City.

The City Attorney's Office is responsible for providing all legal services for the City. The City Attorney's Office retains outside counsel to handle certain specialized legal problems and to assist in handling heavy case loads. The City engages outside counsel only through the City Attorney's Office.

### **Selection of Counsel**

The City's goal is to select firms that will provide high-quality services and that are as dedicated as the City Attorney's Office is to containing legal costs. The City seeks to build continuing relations with firms that share the City's commitment to quality and to cost containment, and to expand and strengthen the City's relations with minority, women and locally-based firms.

Selection of outside counsel for all matters, large and small, is based on the quality of their work, their commitment to controlling costs, and their adherence to budgets. The City encourages innovative approaches to billing such as fixed rate per project, blended hourly rate per project, discounted rates, etc. Where a matter is large enough to require active involvement of a number of attorneys and paralegals, the City favors proposals that make effective use of the City's personnel and law firm personnel. The City has people who are experts in most of the legal issues the City encounters and who know how the City operates. The City expects its outside counsel to take maximum advantage of that expertise and experience.

Although the City contracts with law firms, it selects lawyers. When the City asks a firm to represent it, the City decides which attorneys will be working on its matters, and the City requires advance approval of any changes in assignments.

Where litigation is involved, the City expects that alternative dispute resolution approaches will be considered if they are less costly, but equally effective.

### **General Expectations**

The City Attorney's Office has the ultimate responsibility for managing every legal matter affecting the City. This means that all major strategic and tactical decisions must be approved in advance by the City Attorney.

The City expects all its attorneys to observe the highest ethical standards when representing the City. Any potential conflicts must be discussed with the City as soon as they are recognized.

Be sure that you fully understand the objectives to be achieved and your role in achieving them. This includes participation in establishing a strategy and a budget, which are covered in detail below.

Keep the City advised of significant developments as they occur and obtain the approval of the City Attorney prior to performing services that would cause the budget for your work to be exceeded.

Avoid over-staffing, rotating the attorneys assigned to the City's matters, and multiple representation at meetings, depositions, hearings and court appearances. The City discourages changes in the individual attorneys who are working on the City's matters and the City must be consulted in advance of any proposed changes.

Use the City Attorney's Office in-house support services wherever possible.

Drafts of all briefs and submissions to courts and agencies should be provided to the City Attorney. It is important that drafts be received in adequate time for review and comment. The City also expects to receive the final version of briefs, filings and legal memos.

### **Conflict of Interest**

The City expects to be notified immediately if you become aware of an actual or potential conflict.

The City recognizes that you may, on occasion, be asked to represent clients whose interests are inconsistent with the City's and that you may even be asked to represent parties whose interest are in direct conflict with the City's. The City will generally waive conflicts where no issues of significant City policy are involved, and where there is no connection between matters in which you have represented the City and the matter in which you may be retained. Whenever the City waives a conflict, the waiver will be conditioned on written agreement from the other client that it will not object to your representation of the City in any pending or future matter.

The City generally will **not** waive a conflict if the matter is related to a matter in which you have represented it, or if your firm has access to relevant confidential information of the City's, or if your representation of the other client involves issues of important City policy.

### **Assignment of Attorney**

Before we refer a matter to your firm, the City expects a commitment with respect to the attorneys who will be representing it. If it later becomes necessary to substitute an attorney or add additional attorneys, you must receive prior approval from the City before doing so. Significant roles should not be given to other attorneys without the City's prior concurrence.

While the City expects senior attorneys to perform those tasks that require substantial experience, the City expects that its attorneys will minimize legal expenses by relying on junior attorneys and paralegals for less demanding tasks.

## **Strategy and Budget**

Before you are retained for every new matter, you are required to prepare a strategy and a budget. The budget should estimate total fees and expenses to see the matter to its conclusion. If you anticipate a change in your budget after you are retained, you must discuss it with the City Attorney before the work is done or the expense is incurred. Absent prior approval, the City will not approve bills that exceed the budget.

Litigation strategy should identify alternate methods of disposing of the case, including alternative dispute resolution (ADR) and settlement. An outline should be made of the proposed course of litigation, including dispositive pretrial motions, the scope of discovery and the trial strategy. If it appears that a case will go to trial, an estimate of costs should be sent to the City Attorney no later than the close of discovery, if possible. The detail of all plans (litigation and otherwise) will be dictated by the significance of the matter.

## **Litigation**

Advance approval from the City Attorney is required before:

- Preparing pretrial motions;
- Preparing a cross-complaint that adds new parties to the action;
- Selecting and retaining expert witnesses;
- Preparing motions during trial, post-trial motions or appeals;
- Undertaking any unusual activity, such as a major research memorandum;
- Agreeing to alternative dispute resolution processes; and
- Agreeing to settlement.

You must consult with the City concerning the strategy for taking depositions and other discovery. Your deposition plan should include a brief explanation of the proposed deponent's locations, his or her involvement in the matter, and the purpose of the deposition.

You must exercise restraint in discovery and legal research conducted in routine small matters. The City will not return to a firm that allows costs to approach - much less exceed - the City's exposure or its potential recovery.

The City's litigation counsel must evaluate ADR as substitute for full-scale litigation. The City expects that ADR techniques will be given active consideration from the commencement of litigation. The City does not view ADR as an alternative to be considered only when trial is imminent and after months or years of costly discovery and pretrial battles.

## **Rate Structure**

Billing rates will be established at the outset of each matter. In establishing the rates the City expects you to consider the competitive climate in the practice of law and the fact that the City assures prompt payment.

If you wish to make a change in the billing rates, you must obtain the City's advance consent. The City assumes that the rates at which it is billed are as low as those offered to any of your other government/public agency clients. If any other clients enjoy more favorable billing rates, the City expects to be told how it can qualify for similar billing treatment.

If the billing method is hourly rates, your rates should contain all overhead and internal charges associated with your practice such as administration, secretarial, docket, word processing, accounting, library and other clerical time. If your firm customarily makes separate charges for any of these functions, the billing arrangement must be specifically approved in advance by the City Attorney. The City expects that the hourly rates of firms that bill separately for secretarial or other services will be less than those of competitive firms that include all overhead in their billing rates.

## **Billing**

Absent an express agreement to the contrary, statements must be submitted monthly unless the matter is inactive. Each statement should have the associated fees and costs for each matter, with a total billing amount for all matters.

The detailed backup should include charges by case or file name and the City's specific file number. Within each file number, the name, hours spent (to nearest fraction), and billing rate for each individual who provided services should be indicated with a brief description of the services rendered. "Legal research," "argument of motion," and similar general descriptions are not acceptable. The subject of a motion or research and the purpose are also required.

All bills for services and disbursements must conform to the format of your budget. Your bill must be in a form that will enable the City to directly compare the items that made up your budget with the items that appear on your bill.

If travel time is devoted to working for one or more clients in addition to the City, the City should not be billed for the time devoted to other clients. Billing for time spent in transit should not include time that would be spent in normal commute to your office. Unless agreed to in advance, the City should not be billed for time away from home or the office which is not in transit or spent performing legal services. Any travel that requires an overnight stay or transportation by an airline must be approved in advance. If an overnight stay is necessary, the City has the right to approve the accommodations, and reimbursement for meals will be made at the City's per diem rate. If airline travel is necessary, the City will reimburse at the coach rate.

As noted above, bills for disbursements must be detailed and must reflect only the amounts that you paid out on the City's behalf.

If you charge separately for fax services, duplicating, computer-assisted research, for a special word-processing project that was approved in advance, your bill must show the way in which the charge was developed (for example, in the case of fax and duplicating charges, your bill must show the number of pages and the per page charge; in the case of Westlaw or Lexis research your bill must show the amount that your firm was charged.)

All disbursement charges must be accompanied by a copy of the invoice or statement to verify the charges. The City will not pay charges that exceed the market rate for any service as messenger, depositions, expert witness, and so on.

### **Communication**

You should contact the City Attorney if any issue arises that is not covered by this guide, or if you wish to deviate from any of the stated policies. You may reach Heather Mc Laughlin, City Attorney, at (707) 746-4216 or [hmclaughlin@ci.benicia.ca.us](mailto:hmclaughlin@ci.benicia.ca.us).

## ATTORNEY SERVICES AGREEMENT

THIS AGREEMENT, by and between the City of Benicia, a municipal corporation herein referred to as "City," and \_\_\_\_\_, engaged in the practice of law in the State of California, herein called "Special Counsel."

WHEREAS, the City, acting through its City Attorney, desires to engage Special Counsel, in association with the City Attorney, to assist the City Attorney in general legal matters.

WHEREAS, Special Counsel possesses the skills, qualifications and experience necessary to assist as Special Counsel in said matters; and

WHEREAS, the City Attorney of the City of Benicia, herein referred to as "City Attorney," is the chief legal advisor and litigator for the City and is charged with the responsibility of protecting the interest of the City, its directors, officers, employees and agents in any litigation initiated by or against the City, its Council, officers, employees and agents as provided for by California law and the ordinances of the City;

WITNESSETH:

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1.0 Scope of Services.

Special Counsel is to perform such legal services as may be required from time to time. Special Counsel's performance hereunder shall be under the direction and supervision of the City Attorney. Special Counsel shall coordinate services hereunder with the City Attorney to the extent required by said City Attorney, and that all performances required hereunder by Special Counsel shall be performed to the satisfaction of said City Attorney.

2.0 Time of Performance.

The services of Special Counsel are to commence upon the signing hereof and the assignment of particular matters, and shall be undertaken and completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care.

3.0 Compensation, Reimbursement and Methods of Payments.

3.1 Compensation. Special Counsel shall be compensated by the City Attorney at a rate of up to \_\_\_\_\_ per hour. Total compensation to be paid under this Agreement shall not exceed five thousand dollars (\$5,000.00).

3.2 Reimbursement. In addition to the compensation provided above, the City will reimburse Special Counsel only for the following expenses: printing, Westlaw or Lexis (at

cost-without any mark-up), copying costs (not to exceed 10 cents a page), long-distance telephone calls. Any other expense (e.g., travel expenses or travel time) must be approved by the City Attorney in writing and in advance.

3.3 The City expects moderation with regard to all compensation and expenses. Billing for more than one attorney at a court hearing, meeting or other similar work is discouraged unless the City Attorney has given prior consent.

3.4 Method of Billing. Unless otherwise agreed, Special Counsel shall provide monthly bills unless charges for a particular month are insignificant. The following information must be provided in monthly bills:

A. A detailed description of work, in time increments of .1 hour (one tenth of an hour) for and by each and every individual billing services. Special Counsel shall keep the City advised regarding the identity and the billing rates of those people who work on the account.

B. Identification of the lawyer who is in charge of the matter.

C. Detailed disbursement breakdowns, including the nature and purpose of each disbursement.

D. Each billing item will be separately stated on a separate line identifying the biller, the time spent and the exact nature of the service rendered.

E. Where charges are made for research time, the specific issue being researched and the need will be identified. City has retained Special Counsel for its expertise, and therefore expects not to be billed for introductory or background research. The City will not pay for attorneys, law clerks and paralegals educating themselves or doing work of a transient nature on the case.

4.0 Engagement of Other Counsel, Specialists or Experts.

Special Counsel will not engage or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with this Agreement without the prior written approval of the City Attorney.

5.0 Termination of Agreement and Legal Services.

This Agreement and all legal services to be rendered hereunder may be terminated at any time by written notice from either party with or without cause. In such event, all finished or unfinished documents, project data and reports, both originals and all duplicate copies, in all forms and media requested by the City, shall immediately be turned over to the possession of City, which owns all such materials. In the event of such termination, Special Counsel shall be paid for all satisfactory work, unless such termination is made for cause, in

which event compensation, if any, shall be adjusted in the City's sole discretion in light of the particular facts and circumstances involved in such termination.

6.0 Interest of Members of Local Public Agency.

No member of the governing body of the City, and no other officer, employee or agent of the City who exercises any discretion, function or responsibility in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

7.0 Interest of Counsel.

Special Counsel agrees to secure the informed written consent of the City Attorney before accepting any representation adverse to the City (actual or apparent) during the term of this Agreement, and to forego such representation if the City Attorney, in her sole discretion, objects for any reason.

8.0 Conflict of Interest.

Special Counsel certifies that no member, officer or employee of the Special Counsel is an officer or employee of the City of Benicia except to the extent permitted by law.

9.0 Choice of Forum. The parties hereby agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and/or is to be performed in the City of Benicia and that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Solano at a place to be determined by the rules of the forum.

IN WITNESS WHEREOF, the City and Special Counsel agree as set forth hereinabove.

CITY OF BENICIA

\_\_\_\_\_

By: \_\_\_\_\_  
Heather C. Mc Laughlin  
City Attorney

By: \_\_\_\_\_  
\_\_\_\_\_  
Special Counsel

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_