



TO: Mayor Schroder and City Council

FROM: James Jakel, Interim City Manager

SUBJECT: Amendment to City Attorney Retainer Agreement

DATE: April 26, 2016

Recommendation

Adopt resolution amending the City Attorney Retainer Agreement to increase hourly rates.

Background

The firm of Walter & Pistole and/or Jeffrey A. Walter has been the City Attorney for the City of Martinez since December 1984. The fees that the firm has been charging the City of Martinez have been some of the lowest fees historically charged by contract city attorneys in Northern California. As the attached chart shows, whether examining the City Attorney's current or proposed rates, that continues to be the case.

By agreement dated September 5, 2001, the City Council granted certain hourly rate increases to the City Attorney. The agreement also grants the City Attorney the right to annually increase the City Attorney's hourly rates by the annual change in the Consumer Price Index (CPI), not to exceed \$5 per hour.

By agreement dated November 6, 2002, the rates for non-litigation legal services provided by the City Attorney were increased from \$135 per hour to \$145 per hour. The rate for litigation services was increased from \$145 per hour to \$150 per hour. The hourly rate charged for cost recovery work was increased from \$185 per hour to \$190 per hour. **It is important to emphasize that the legal charges incurred under the City's cost recovery program are ultimately reimbursed to the City by third parties, typically developers and, as such, the City does not end up paying them.** The November 6, 2002 Agreement was the last time the Council formally approved increases in the City Attorney's rates.

Although the City Attorney's retainer agreement allows the City Attorney to increase his firm's rates each year by the CPI, during the 13 ½ years that have passed since the November 2002 increase in the City Attorney's rates, the City Attorney has elected not to increase his hourly rates in 6 of those years. As a result, not only have the City Attorney's hourly rates been historically below market, with respect to the litigation and non-litigation rates, they have not kept pace with inflation. From October 2002 to December 2015, the CPI for all urban consumers in the San Francisco-Oakland-San Jose metropolitan area increased 34%. From November 2002 to December 2015, the City Attorney's litigation rate and non-litigation rate increased 21% and 21.5%, respectively.

With the seven CPI adjustments that did occur during the past 13 ½ years, the hourly rates which the City Attorney is currently charging the City are:

1. Paralegal Services - \$92.67 per hour
2. Attorney Non-Litigation Services - \$176.13 per hour
3. Attorney Litigation Services - \$187.40 per hour
4. Cost Recovery Legal Services - \$280.00 per hour

The City Attorney is proposing to increase the above hourly rates as follows:

1. Paralegal Services – from \$92.67 per hour to \$110.00 per hour
2. Attorney Non-Litigation Services – from \$176.13 per hour to \$190.00 per hour
3. Attorney Litigation Services – from \$187.40 per hour to \$225.00 per hour
4. Cost Recovery Legal Services – from \$280.00 per hour to \$300.00 per hour

As mentioned above, even the proposed rates are at the low end of the rates charged by other firms providing city attorney services to cities in the State of California. The proposed non-litigation rate represents a 31% increase over the rate approved in 2002. But during that same period of time, the CPI increased 34%. The proposed rates are well below the rates the City is currently paying other attorneys providing legal service to the City of Martinez at the present time. For example, the Burke Williams Sorensen law firm is providing contract negotiation services to the City, charging \$320.00 per hour. Liebert Cassidy Whitmore is providing legal services in updating some of the City's personnel rules. It is charging the City at the rate of \$292.50 per hour for partners and up to \$230.50 per hour for associates.¹

Fiscal Impact

The proposed increase in the cost recovery rate will not impact the City's general fund because cost recovery fees are ultimately paid by third parties, not the City.

The proposed increase in the non-litigation rate is 8% more than the current non-litigation rate. Non-litigation work constitutes the overwhelming portion of work performed by the City Attorney for the City. In the last three calendar years, the portion the non-litigation work represented of the total hours billed by the City Attorney ranged from 96% (in 2013) to 83.2% (in 2015).²

¹ This is a discounted rate being offered by Liebert Cassidy Whitmore. Through the 2015 calendar year, it charged up to \$325.00 per hour for its partners under its standard rate schedule.

² In 2013, the litigation work represented 2 ½% of the total hours billed and the cost recovery work represented 1 ½% of the total hours billed. Similarly, in 2014, the litigation work represented 2% of the total hours billed by the City Attorney and the cost recovery work represented 2.7% of the total hours billed. In 2015, the litigation work represented 9.3% of the total hours billed and the cost recovery work represented 7.5% of the total hours billed by the City Attorney.

Consequently, the largest impact on the general fund from the proposed rate increases will be reflected in the City Attorney's billings for non-litigation work. However, these financial implications to the City's general fund are not significant.

Over the last three calendar years, the average annual amount charged by the City Attorney for fees and fee-based costs for non-litigation services equaled \$194,667.00. An 8% increase (as is being proposed) applied to this average amounts to \$15,573.00. On average, then, it can be expected that the City Attorney's proposed rate increase will impact the general fund in an approximate amount of \$15,573.00 on an annual basis.³

Attachments

1. Resolution
2. Amended and Restated Retainer Agreement dated September 5, 2001
3. Amendment to Amended and Restated Retainer Agreement dated November 6, 2002
4. (Proposed) Second Amendment to Amended and Restated Retainer Agreement (2016)
5. Comparative Hourly Rates (Matrix)

APPROVED BY:



Interim City Manager

³ The fiscal impact of the City Attorney's proposed increase in its litigation rate will depend upon the amount of litigation experienced by the City in any given year. The litigation rate is proposed to be increased by 20% over the existing amount. In 2013, the City Attorney charged the City \$4,422.00 in fees and fee-based costs for litigation services. $20\% \times \$4,422 = \884 . In 2014, the City Attorney charged the City \$4,811.00 in fees and fee-based costs for litigation services. $20\% \times 4,811 = \$962$. In 2015, due to litigation filed by the Ghilotti Construction Co. challenging the City Council's award of a bridge replacement project, the City's annual litigation expenses jumped to \$27,155. $20\% \times \$27,155 = \$5,431$.

RESOLUTION NO. -16

**APPROVING THE SECOND AMENDMENT TO THE
AMENDED AND RESTATED CITY ATTORNEY RETAINER AGREEMENT**

WHEREAS, the firm Walter & Pistole and Jeffrey A. Walter have provided high quality legal services to the City since 1984, and

WHEREAS, it is reasonable to increase the rates paid to the City Attorney to rates which are competitive and still remain as some of the lowest rates charged by contract city attorneys in Northern California and elsewhere:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARTINEZ RESOLVES AS FOLLOWS:

1. The Second Amendment to Amended and Restated Retainer Agreement with Jeffrey A. Walter attached hereto is approved and the Mayor and/or the City Manager are authorized to execute same on behalf of the City of Martinez.

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly and regularly passed by the City Council of the City of Martinez at a regular meeting held on the 4th day of May, 2016 by the following vote:

AYES:

NOS:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

AMENDED AND RESTATED RETAINER AGREEMENT

THIS AGREEMENT is made this 5th day of September, 2001, by and between the CITY OF MARTINEZ (hereinafter referred to as the "CITY") and JEFFREY A. WALTER (hereinafter referred to as the "ATTORNEY").

RECITALS

WHEREAS, JEFFREY A. WALTER is an attorney licensed to practice law in all the Courts of the State of California, and JEFFREY A. WALTER was appointed as the City Attorney for the CITY effective December 19, 1984 and has continued in that position to the present time; and

WHEREAS, the parties hereto entered into an agreement providing for the Attorney's compensation as City Attorney on December 19, 1984, which agreement was subsequently amended on October 2, 1985, July 19, 1990, and March 4, 1996; and

WHEREAS, it is the desire of the parties hereto to amend and restate their agreements in one, combined agreement setting forth the terms and conditions for the continued rendition of legal services by the ATTORNEY to the CITY and the compensation therefor;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

AGREEMENT

1. Term.

This Agreement shall become effective August 21, 2001, and shall continue in full force and effect unless terminated as provided in this Agreement. All of the agreements described in the Recitals are hereby combined into this agreement and herein are restated and amended.

2. Services and Time Devoted.

A. Jeffrey A. Walter is hereby continued to be retained as the City Attorney for the CITY and has been retained as the City Attorney since December 19, 1984. The parties understand and agree that the ATTORNEY may, from time to time, utilize other attorneys who are members of or associated with Jeffrey A. Walter's professional corporation, his law firm or Jeffrey A. Walter (sometimes collectively referred to as "attorneys associated with the ATTORNEY") to assist in the performance of this agreement. The ATTORNEY shall render those services normally rendered by a City Attorney including, but not limited to, attending staff meetings, regular and special City Council meetings, and other meetings as required by the City; drafting and reviewing of contracts, correspondence, deeds and other

documents; prosecuting and defending all litigation matters on behalf of the City (except those covered by the City's insurance carrier or actions in which the City chooses to use other legal counsel); conducting legal and factual research; attending office conferences with staff, Council members and other persons or entities; rendering advice and opinions; providing those services described on Exhibit "A" attached hereto and incorporated by reference; and providing other legal services (except as bond counsel) as may be necessary or appropriate in order to provide the CITY with legal representation commensurate with its needs.

B. The ATTORNEY agrees to devote whatever time is necessary to render the services outlined in the preceding paragraph.

C. Wherever feasible, the ATTORNEY shall utilize his experience and representation of other cities to share research and reduce the costs to the CITY incurred by the CITY in representing the CITY in matters which are common to more than one of the ATTORNEY's municipal clients.

3. Compensation.

A. For each hour of legal services rendered by the ATTORNEY in connection with matters not involving litigation, the ATTORNEY shall be paid as follows:

(1) For services rendered by the ATTORNEY or any other attorney associated with the ATTORNEY, the ATTORNEY shall be paid \$135.00.

B. For each hour of services rendered by the ATTORNEY or any other attorney associated with the ATTORNEY in connection with matters involving litigation, the ATTORNEY shall be paid \$145.00.

(1) "Matters involving litigation" shall be defined to mean any matter (1) which is the subject of litigation, arbitration, grievance or formal or administrative proceedings in which the CITY and/or a City employee is a named party, (2) for which the CITY Council has given its authorization to the ATTORNEY to defend, initiate or investigate the defense or initiation of litigation, arbitration, grievance or other formal or administrative proceedings in behalf of the CITY and/or its employees, or (3) which is the subject of litigation, arbitration, grievance or formal or administrative proceedings in which the CITY and/or a city employee is involved in some manner, such as a witness.

C. For each hour of services rendered by a paralegal, the ATTORNEY shall be paid \$80.00.

D. For each hour of service which the ATTORNEY or any other attorney associated with the ATTORNEY performs in connection with

a matter: (i) for which the CITY receives legal fees and cost payment or reimbursement from private parties or other sources besides the CITY, or (ii) involving condemnation or other proceedings initiated by the ATTORNEY or his associated attorneys for the benefit of private parties or their interests, the ATTORNEY shall be paid \$185.

E. Any legal services rendered hereunder which consume less than an hour shall be billed at the above-stated rates on a proportionate basis and rounded to the nearest one-tenth (1/10th) of an hour.

F. The ATTORNEY shall be paid the compensation and costs provided for herein on a monthly basis for services rendered and costs incurred during the month period immediately preceding each billing statement the ATTORNEY submits to the CITY. The CITY shall pay the sums specified as owing in each said statement in a timely and prompt manner.

G. The CITY shall not be billed nor pay for the ATTORNEY'S time spent in travel except travel time spent for special meetings required by the CITY and in connection with litigation.

H. Commencing on June 21, 2002, and on June 21 of each year thereafter, the ATTORNEY may increase the rates specified in paragraph 3 by the previous 12 month's change in the Consumer Price Index, San Francisco Metropolitan Area, All Consumers, or \$5.00 per hour, whichever is less, to reflect increases in overhead and other costs.

4. Costs and Other expenses.

A. The CITY shall pay all costs and expenses of litigation, arbitration, mediation, or similar proceedings, including but not limited to, filing fees, expert witnesses' fees, costs associated with service of process, and discovery expenses. The CITY shall also pay for all costs of copying and special services such as express mail, delivery services, telegrams, faxes, parking, tolls, etc.

B. In the event that ATTORNEY advances or incurs costs or expenses in behalf of the CITY, including but not limited to faxes, mileage, bridge tolls and parking fees, it shall be reimbursed said costs by the CITY.

C. The CITY shall pay for the costs the ATTORNEY incurs in computer-assisted research.

D. The CITY shall pay 5% of the fees incurred each month to cover general overhead costs, including long distance telephone, postage and normal on-premises copying charges.

5. Offices, Equipment and Supplies.

A. The ATTORNEY shall supply its own offices, secretarial, and staff assistance, equipment and supplies and pay all associated costs.

B. The CITY shall supply the ATTORNEY with any special supplies that the CITY may require.

6. Employment of Consultants and Associates.

The ATTORNEY, in the exercise of his reasonable judgment, may retain special counsel, paralegals or other experts to assist him in fulfilling the terms and conditions of this Agreement. The costs of retaining such experts shall be paid for by the CITY in the manner and at the time the ATTORNEY is paid his monthly bill.

7. Termination.

This Agreement may be terminated by either party by giving thirty (30) days written notice to the other party of its intention to terminate this Agreement.

8. Addresses

All notices required by this Agreement shall be deemed effective upon personal delivery or ten (10) days after deposit into the United States mail, postage prepaid, and addressed to the other party at the address specified below:

CITY OF MARTINEZ
c/o City Manager
525 Henrietta Street
Martinez, CA 94553-2394

Jeffrey A. Walter
Walter & Pistole
670 West Napa Street, Suite F
Sonoma, CA 95476

9. Indemnification.

The CITY shall indemnify, defend and hold harmless the ATTORNEY, his or his professional corporation's, associates, agents and employees ("indemnitees") against any and all liabilities caused to or claims brought by persons or entities not parties to this Agreement and arising out of indemnitees' performance hereunder and the indemnitees shall be deemed to have those rights accorded employees under California Government Code §§825, 825.2. The ATTORNEY shall approve any defense counsel selected by the CITY to defend the indemnitees in such circumstances, which said approval shall not be unreasonably withheld. Any settlement or other out-of-court resolution of any such liabilities or claims shall be subject to the approval of

the ATTORNEY, which said approval may not be unreasonably withheld.

Executed at Martinez, California, on the date first written above.

CITY OF MARTINEZ

By: 
Michael Menesini, Mayor


JEFFREY A. WALTER

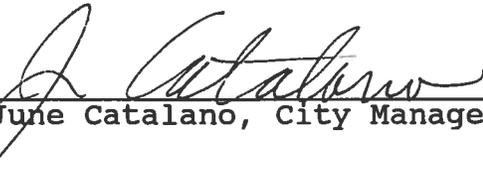
By: 
June Catalano, City Manager

EXHIBIT "A"

Attorney Services

Except as provided elsewhere in this Agreement, the ATTORNEY shall provide all of the usual, customary and necessary services, normally provided by a City Attorney as those services are required. Scope of services to be provided shall include the following:

1. Attendance at departmental meetings, staff meetings or committee meetings deemed necessary and appropriate, or as requested by the City Manager or City Council;
2. Research, preparation or review of all written opinions, ordinances, resolutions, agreements, leases, public works contracts, and other documents of a legal nature necessary or requested by the City Manager or City Council;
3. Provision of all legal advice on behalf of the City to City Councilmembers, City Manager, Commissioners, department heads and other designated personnel as appropriate;
4. Commencement and prosecution of all criminal actions necessary and appropriate to enforce municipal ordinances, including enforcement through administrative proceedings;
5. Monitoring and advising the City Council and staff or legislation and case law affecting the City;
6. Representing the City in the administration of all claims and litigation filed by or against it; provided, however, that outside counsel shall be retained in the event of a conflict of interest which disqualifies the ATTORNEY from such representation;
7. Rendering advice and assistance to City's representatives on labor relations matters, reviewing memoranda of understanding or other labor agreements, drafting implementing legislation or other pertinent documents and representation of City before mediators or arbitrators on matters arising from memoranda of understanding or the City's personnel rules;
8. Rendering advice and assistance in the administration of the City's general liability risk management and insurance programs;
9. Monitoring activities of any special counsel retained by the City; and
10. Providing conflict of interest assistance to Council and staff on behalf of the City and assisting members and staff in seeking advice from the FPPC.

17.00.00

AMENDMENT TO AMENDED AND RESTATED RETAINER AGREEMENT

THIS AGREEMENT is entered into on this ⁶ ~~16~~^{Nov.} day of ~~October~~ 2002 by and between the City of Martinez ("City") and Jeffrey A. Walter ("Attorney").

Jaw

It is mutually agreed that:

AGREEMENT

1. The Amended and Restated Retainer Agreement entered into by and between the parties and dated September 5, 2001 ("Original Agreement") is amended as follows:
 - A. Section 3(A)(1) is amended to read as follows:
 - (1) For services rendered by the ATTORNEY or any other attorney associated with the ATTORNEY, the ATTORNEY shall be paid \$145.00
 - B. Section 3(B) is amended to read as follows:
 - B. For each hour of services rendered by the ATTORNEY or any other attorney associated with the ATTORNEY in connection with matters involving litigation, the ATTORNEY shall be paid \$155.00
 - C. Section 3(D) is amended to read as follows:
 - D. For each hour of service which the ATTORNEY or any other attorney associated with the ATTORNEY performs in connection with a matter: (i) for which the CITY receives legal fees and cost payment or reimbursement from private parties or other sources besides the CITY, or (ii) involving condemnation or other proceedings initiated by the ATTORNEY or his associated attorneys for the benefit of private parties or their interests, the ATTORNEY shall be paid \$190.00.
2. Except as amended herein, and the Original Agreement shall remain in full force and effect and be unaffected by this Agreement.

IN WITNESS WHEREOF the parties hereto execute this Agreement on the date first appearing above.

Jeffrey A. Walter

Jeffrey A. Walter

City of Martinez
By: *Michael Menesini*

Michael Menesini, Mayor

By: *June Catalano*

June Catalano, City Manager

**SECOND AMENDMENT TO AMENDED AND RESTATED
CITY ATTORNEY RETAINER AGREEMENT**

THIS AGREEMENT is entered into on this _____ day of _____, 2016, by and between the City of Martinez (“CITY”) and Jeffrey A. Walter (“ATTORNEY”).

1. The Amended and Restated Retainer Agreement entered into by and between the parties hereto and dated September 5, 2001, and amended by an Amendment to Amended and Restated Retainer Agreement dated November 6, 2002 (collectively the “Original Agreement”), is amended as follows:

A. Section 3(A)(1) is amended to read as follows:

(1) For services rendered by ATTORNEY or any other attorney associated with ATTORNEY, ATTORNEY shall be paid \$190.00 per hour.

B. Section 3(B) is amended to read as follows:

B. For each hour of services rendered by ATTORNEY or any other attorney associated with ATTORNEY in connection with matters involving litigation, ATTORNEY shall be paid \$225.00 per hour.

C. Section 3(C) is amended to read as follows:

C. For each hour of services rendered by a paralegal, ATTORNEY shall be paid \$110.00 per hour.

D. Section 3(D) is amended to read as follows:

D. For each hour of service which ATTORNEY or any other attorney associated with ATTORNEY performs in connection with a matter: (i) for which CITY receives legal fees and cost payment or reimbursement from private parties or other sources besides CITY, or (ii) involving condemnation or other proceedings initiated by ATTORNEY or his associated attorneys for the benefit of private parties or their interests, ATTORNEY shall be paid \$300.00 per hour.

E. Section 10 shall be added to the Original Agreement to read as follows:

10. Document Retention Policy.

CITY is entitled upon written request to the City Materials (defined below) in any files in ATTORNEY’s possession relating to the legal services performed by ATTORNEY for CITY, excluding ATTORNEY’s internal accounting records, attorney work product, and other documents not reasonably necessary to CITY’s representation,

subject to ATTORNEY's right to make copies of any files withdrawn by CITY. Once a matter is concluded, ATTORNEY will close the file, and CITY will receive notice thereof. CITY's physical files may be sent to storage offsite, and thereafter there may be an administrative cost for retrieving them from storage. Thus, it is recommended that CITY request the return of a file at the conclusion of a matter. Under ATTORNEY's document retention policy, ATTORNEY normally destroys files five (5) years after a matter is closed, unless other arrangements are made with CITY.

All CITY-supplied materials and all attorney end-product (referred to generally as "City Materials" are the property of CITY. Attorney work product is the property of ATTORNEY. Attorney work product includes, for example, drafts, notes, internal memoranda, research and electronic files, and attorney representation and administration materials, including attorney-client correspondence and conflicts materials.

After the close of a matter, ATTORNEY will notify CITY of any City Materials that remain in ATTORNEY's possession. CITY will be invited to retrieve these City Materials within 45 days of notice, or CITY may direct ATTORNEY to forward the City Materials to CITY, at CITY's expense. If within 45 days of this notice CITY fails to retrieve the City Materials or to request ATTORNEY to forward them, CITY authorizes ATTORNEY to destroy the City Materials.

After the 45-day period, ATTORNEY will, consistent with all applicable rules of professional conduct, use its discretion as to the retention or destruction of all attorney work product and any City Materials that remain with ATTORNEY.

2. Except as admended herein, the Original Agreement shall remain in full force and effect and be unaffected by this Agreement.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first appearing above.

ATTORNEY

CITY OF MARTINEZ

Jeffrey A. Walter

By: _____, _____

COMPARATIVE HOURLY RATES

	Non Litigation		Special Services ¹	Litigation		Cost Recovery ²	
	Associate	Principal		Associate	Principal	Associate	Principal
Belvedere (to be increased later this year)	\$215	\$215	\$215	\$215	\$215	\$215	\$215
Cloverdale	\$230	\$230	\$260-\$325	\$260	\$325		
Corte Madera							
Cotati	\$230	\$230	\$260-\$325	\$260	\$325		
Covina	\$241	\$241	\$241	\$241	\$241	\$241	\$241
Fairfax (as of 2012)	\$190	\$190		\$275	\$275		
Fairfield (as of 2012)	Monthly Retainer = \$46,800			\$165-\$225	\$250-\$300	\$165-\$225	\$250-\$300
Healdsburg	\$230	\$230	\$260-\$325	\$260	\$325		
Irvine	\$425	\$425	\$425	\$425	\$425	\$425	\$425
Martinez	\$176.13	\$176.13		\$187.40	\$187.40	\$280.00	\$280.00
Mill Valley (as of 2012)	\$200			\$225-\$240	\$250-\$300	\$225-\$240	\$250-\$300
Mission Viejo	\$315	\$315	\$315	\$315	\$315	\$315	\$315
Novato	\$190.00	\$190.00		\$225.00	\$225.00	\$300.00	\$300.00
Ross (as of 2012)	\$225	\$225	\$225	\$225	\$225	\$225	\$225
San Anselmo (to be increased later this year)	\$215	\$215	\$215	\$215	\$215	\$215	\$215
San Juan Capistrano	\$255	\$310	\$310	\$255	\$310	\$255	\$310
Sonoma	\$195	\$195	\$195	\$225	\$225	\$275	\$275
St. Helena	\$245	\$245	\$260-\$305	\$260	\$305		
Stanton	\$242	\$242	\$242	\$242	\$242	\$242	\$242
Windsor	\$230	\$230	\$260-\$325	\$260	\$325		
Yorba Linda	\$205	\$205	\$205	\$205	\$205	\$205	\$205
Yountville (as of 2012)	\$175-\$185	\$175-\$185	\$210	\$210	\$210	\$250	\$400

¹ In some cities, the city attorney charges one rate for "normal" city attorney work, such as drafting standard agreements, resolutions and ordinances, attending Council meetings and rendering conflict of interest opinions. For more complicated work, such as telecommunications, complicated contracts, water rights issues, etc., a higher rate is charged.

² Fees charged for "cost recovery" work are ultimately paid for by third parties, such as developers, or from other non-general fund revenues.