



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
May 16, 2012**

TO: Mayor and City Council Members
FROM: Alan Shear, Assistant City Manager
SUBJECT: Legal Representation for Pleasant Hill-Martinez Joint Facilities Agency in *Barbara Neustadter vs CalPERS* Litigation
DATE: May 10, 2012

RECOMMENDATION:

Approve the attached letter agreement for legal representation in the Barbar Neustadter vs. CalPERS litigation and authorize the Executive Director, Philip Vince, to execute same on behalf of the Agency.

BACKGROUND:

From 2000 to 2007, the Agency employed Barbara Neustadter on a part-time basis. During that time, she was enrolled in CalPERS. Upon her retirement, she made a claim with CalPERS for retirement benefits based upon the hourly compensation she received while employed with the Agency between 2000 and 2007.

CalPERS denied Ms. Neustadter her claim. She appealed and the matter went to an administrative hearing. The administrative law judge ruled in favor of CalPERS and against Ms. Neustadter and that ruling was confirmed by the CalPERS board in early 2012.

In April 2012, Ms. Neustadter filed a Petition for Writ of Administrative Mandamus with the Contra Costa County Superior Court, Case No. N12-0547. Not only is Ms. Neustadter challenging the propriety of CalPERS' decision denying her retirement benefits based upon her compensation paid by the Agency, she has also named the Agency as a party to this lawsuit.

Ms. Neustadter has demanded in her lawsuit that if the court does not overturn CalPERS' decision, she wants the City to pay her the additional amount of retirement benefits she would have earned had CalPERS agreed to include, in its benefit calculations, her compensation earned from the Agency. The Agency is required to respond (answer) Ms. Neustadter's petition by no later than **June 7, 2012**.

Although Jeffrey Walter and his firm have a retainer agreement with the City of Martinez to represent the City as its city attorney and in various other matters specified in the agreement, that retainer agreement does not expressly cover claims made against the Agency or other Agency-

related matters. Therefore, out of an excess of caution, Agency staff is recommending that a separate retainer agreement be entered into between the Mr. Walter and his firm and the Agency. Attached is the proposed retainer letter agreement. The rates Mr. Walter and his firm are charging the Agency are the same as the rates he and his firm are charging the City.

FISCAL IMPACT:

Unknown and will depend on the success or failure of the Agency's defense to the Petition that has been filed against it.

ACTION:

Motion approving the attached retainer letter agreement with Jeffrey A. Walter and his firm for Agency representation in the *Barbara Neustadter vs. CalPERS* litigation and authorizing Philip Vince to execute same on behalf of the Agency.

Attachments:

Exhibit A--Proposed Letter Retention Agreement

APPROVED BY:


Executive Director

May 10, 2012

Phil Vince, Executive Director
Pleasant Hill-Martinez Joint
Facilities Agency ("Agency")
525 Henrietta Street
Martinez, CA 94553

Re: *Barbara Neustadter v. CalPERS, et al.*
Contra Costa County Superior Court Case No. N12-0547

Dear Phil:

Our firm proposes to provide the Agency legal representation in the above-entitled case and other matters designated by you under the terms of this letter agreement. Our firm bills attorney services at the rate of \$170.00 per hour for litigation and administrative advocacy services and \$160.00 per hour for non-litigation work. This hourly rate may change during the course of our representation of the Agency in the same manner as our rates are adjusted under the retainer agreement I have with the City of Martinez.

Our charges will include, but not necessarily be limited to, conferences, all telephone calls, legal research, travel time, court or administrative agency appearances, and drafting of documents and correspondence. There will be no separate rate time charges for secretarial or clerical staff. The Agency will be billed for paralegal services at the rate of \$85.00 per hour, should any paralegal services be rendered. The Agency will be charged for all computer-assisted research at the firm's cost. The Agency will be charged one and one-half percent (1.5%) of the Agency's monthly fee bill for photocopies done on the premises, long-distance telephone calls and/or postage. Other expenses and costs may be advanced by this office on the Agency's behalf for filing fees, investigation and document retrieval fees, service of process fees, court reporters and expert witnesses, if required; these charges will be separate from our hourly charge and will be charged against the Agency as our own fees and costs will be charged against the Agency. The Agency will be charged 1% of any outstanding balance for amounts due and unpaid for thirty or more days.

Phil Vince, Executive Director
Pleasant Hill-Martinez Joint
Facilities Agency
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It is our firm's policy to return all our client's original documents and to keep copies for our files. Following the termination of our representation, the contents of the Agency's file may be destroyed consistent with State law and Agency policy.

If the retention of our services under these terms is acceptable to the Agency, please sign the enclosed copy of this letter, returning it to me in the enclosed envelope. Keep the original of this letter for the Agency's own files.

This firm maintains errors and omissions insurance coverage applicable to the services anticipated to be rendered to the Agency in this matter.

You may be assured of the full commitment of our services and those of our office to the Agency's representation in this matter and of our best efforts to achieve the most satisfactory disposition thereof.

Sincerely yours,

WALTER & PISTOLE

JEFFREY A. WALTER

JAW/lm

Enclosure

The Pleasant Hill-Martinez Joint Facilities Agency hereby agrees to the terms of this letter pertaining to its retention of Jeffrey A. Walter and the firm of Walter & Pistole.

PLEASANT HILL-MARTINEZ JOINT
FACILITIES AGENCY

Dated: _____

By: _____
Phil Vince, Executive Director