



CITY COUNCIL STAFF REPORT

DATE: May 17, 2017

Consent Calendar

SUBJECT: AGREEMENT FOR ATTORNEY SERVICES,
WOODRUFF, SPRADLIN & SMART

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

SUMMARY

The City of Palm Springs has established the Office of the City Attorney as an in-house department to lead and coordinate in the direction and provision of all legal services to the City. Woodruff, Spradlin & Smart, a full service municipal law firm, has provided city attorney services to the City on a contract basis for the last twelve (12) years. This agreement will allow that law firm to provide continuing legal services to the City as required and directed by the City Attorney.

RECOMMENDATION:

Approve an "Agreement for Attorney Services" in substantially the form transmitted to the Council under copy of this report, subject only to negotiation, clarification and revision by and between the City Attorney with Woodruff, Spradlin & Smart consistent with this staff report, and direct the City Manager to sign the agreement in a form approved by the City Attorney.

STAFF ANALYSIS:

Douglas C. Holland has served as City Attorney for the City of Palm Springs for more than a decade. Despite the Council's decision to hire an "in-house" City Attorney, Mr. Holland remains a legal resource for the City on a going forward basis. His relationship to date with the City and its officials, combined with his familiarity with the City's history and all pending City litigation, support a simple conclusion. The City's legal position might, in some respects, be compromised by an unnecessarily abrupt termination of all legal services by Mr. Holland. The attorneys supporting Mr. Holland at Woodruff, Spradlin & Smart are competent practitioners who have earned the trust and respect of City staff, the City's Planning Commission, the City Manager, and the City Council.

The City Attorney's Office is not staffed. At the risk of stating the obvious, the City Attorney, working as a "sole practitioner" at City Hall, cannot provide legal services to the City of Palm Springs without the assistance of other lawyers. Not only has Woodruff,

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Spradlin and Smart worked on general and transactional matters for the City, it has handled a substantial amount of litigation, and provided specialized legal services as well.

The City Attorney is familiar with the "market" with respect to hourly billing rates for law firms of the caliber of Woodruff, Spradlin & Smart. Even without the level of special knowledge and experience corresponding to more than a decade of experience, the rates proposed are fair. The City Attorney will work with Woodruff, Spradlin & Smart to more precisely define the nature of services billed at any rate higher than two hundred twenty-five dollars (\$225.00) per hour, identify a cap on potential hourly rates, and reduce rates payable to paralegals (proposed at one hundred sixty dollars (\$160.00) per hour. The City Attorney will also negotiate language to be added to the proposed agreement, prepared by Woodruff, Spradlin & Smart, to ensure efficient and cost-effective administration in the City's relationship with its prior city attorney firm.

ALTERNATIVES:

Reject the proposed agreement, and provide direction to the City Attorney as to points that the Council wants to modify in establishing the City's new relationship with Woodruff, Spradlin & Smart.

Reject the proposed agreement and direct the City to market the opportunity to provide legal services to the City of Palm Springs, under the supervision and in coordination with the City Attorney's office.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION:

This agreement is not a "project" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378. This Ordinance is organizational or administrative activity by the City of Palm Springs in furtherance of its police power, and will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

FISCAL IMPACT:

The City Attorney's office, staffed by a single attorney, cannot deliver the level of service (*i.e.*, the volume of work hours) provided by a full service municipal law firm. The fiscal impact of this agreement is a necessary burden for the City to bear, whether through this agreement, or another, with a different law firm. Woodruff, Spradlin & Smart's current hourly rate for all legal services is two hundred seven dollars (\$207.00) per hour. The increase in the hourly rate of Woodruff, Spradlin & Smart for general services to two hundred twenty five dollars (\$225.00) per hour, and two hundred fifty dollars (\$250.00) per hour for specialized services, is consistent with the elimination of an economy of scale from which that firm benefited. Furthermore, these rates are

reasonable in the marketplace as attorneys' rates payable to outside counsel for high quality services.

More importantly, the City has been paying Woodruff, Spradlin & Smart a monthly retainer in the amount of twenty five thousand eight hundred and fifty nine dollars (\$25,859.00). That is no longer going to be the case, and a significant savings on external legal fees payable out of the budget of the City Attorney's office will be realized immediately.

As the City Attorney continues to transition into his new position, the need for Mr. Holland's services will diminish. Once the City Attorney fully assimilates into City operations, Mr. Holland will work far less than he does now. When the City Attorney's office hires an assistant city attorney, there should be no need whatsoever for any outside legal professional at City Hall on a frequent basis.



Edward Z. Kotkin, City Attorney



David H. Ready, Esq., Ph.D., City Manager

Attachments: Agreement for Attorney Services

AGREEMENT FOR ATTORNEY SERVICES

THIS AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 2017, by and between the CITY OF PALM SPRINGS, a California charter city ("City"), and the law firm of WOODRUFF, SPRADLIN & SMART, a Professional Corporation (hereinafter "WS&S").

RECITALS

A. The City Council, as the governing body of the City of Palm Springs, pursuant to its authority under the City Charter, desires to contract with WS&S to provide legal services for the City as may be requested or required by the City Attorney or City Council, including without limitation transactional, litigation, and code enforcement services.

B. WS&S desires to provide the foregoing services and to perform legal services as necessary for the support of the City Attorney and the City Council.

C. City and WS&S wish to provide for the terms and conditions of retaining and employing WS&S to provide legal services as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. **Retention of WS&S.** City hereby retains and employs WS&S to provide legal services as may be requested or required in support of the City Attorney or the City Council. Such services include but are not necessarily limited to municipal transactional services, civil litigation, and code enforcement litigation.

2. **Independent Contractor.**

WS&S and any attorneys or other persons employed by WS&S, shall at all times be considered an independent contractor and not an employee of the City and not entitled to any benefits of the City's employees. Except to the extent provided herein, the City and its employees shall not have any control over the conduct of WS&S.

3. **Fees, Costs, and Expenses.**

3.1 City agrees to pay WS&S at the rates set forth in Exhibit "A," which is attached hereto and is incorporated herein by reference. WS&S may adjust the rates no more than once in a calendar year after providing City with at least thirty (30) days prior written notice.

3.2 City agrees to pay out-of-pocket costs and expenses associated with WS&S' work pursuant to Exhibit "A".

4. **Statements/Task-Billing.** WS&S shall prepare and present to City detailed monthly statements for professional and other services rendered to City for the month preceding the statement, indicating each task performed by WS&S. City shall pay the statements within 30 days of receipt of the same. WS&S shall update City, upon request, regarding the status of WS&S' billings.

5. **Insurance and Indemnification.**

5.1. WS&S shall carry Professional Liability/Errors and Omissions insurances in an amount not less than \$2 million per occurrence and \$4 million in aggregate. The City shall be named as a certificate holder and an additional insured on the Automotive Liability policy. All insurance coverage shall be provided by an insurance company with a rating of A-, VII or greater in the latest edition of Best's Insurance Guide and authorized to do business in the State of California. Such policies shall not be canceled or materially changed absent 30 days' prior written notice to the City. With respect to Professional Liability/Errors and Omissions insurance, WS&S agrees to maintain such insurance for at least three years after termination of this Agreement as long as such insurance is reasonably available on the market.

5.2. WS&S agrees to indemnify, defend and hold harmless, the City, its City Council, officers, agents and employees from and against all claim, demands, damages, injury or judgment which arises out of the negligent performance or willful misconduct of WS&S in performing under this Agreement.

6. **Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in the County of Riverside, before one arbitrator. In the event the parties are unable to agree upon an arbitrator, an arbitrator shall be selected through the rules of the American Arbitration Association. The Arbitrator shall have the authority to set procedures and discovery in the arbitration. In any such matter, the prevailing party shall be entitled to recover its reasonable costs and attorney's fees. Judgment on the arbitrator's written award may be entered in any court having jurisdiction. The arbitrator's remedial power shall be the same as the remedial power a court would have over the dispute. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The parties shall be jointly responsible for the arbitration fees and the arbitrator's compensation and expenses. The arbitrator shall award costs to the prevailing party which shall include reasonable attorney's fees and any other costs not jointly agreed to be shared between the parties. In the event one party has paid more than its share of the arbitration fees and expenses, the arbitrator may award fees and expenses to such party. This section shall survive the expiration of this Agreement.

7. **Term and Termination.** The term of this Agreement shall commence on May 8, 2013, until terminated by either party. WS&S shall serve under the terms of this Agreement at the pleasure of City, and by a majority vote of the City Council, City hereby reserves the right to terminate this Agreement upon 10 days written notice to WS&S for any

reason or to require substitute attorney personnel. When WS&S' services are terminated, all unpaid charges shall be due and payable to WS&S for work actually performed up to the time of termination and for any other work it completes at the direction of the City. WS&S may terminate this Agreement with or without cause upon 90 days written notice to the City.

8. Notice. Any notices required by this Agreement shall be given by personal service or by delivery of such notice by first-class mail, postage prepaid. Such notices shall be addressed to each party at the address listed below. Either party may change the information in such notice upon written notice as provided herein.

City:
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263-2743
Attn: City Attorney
Phone: 760.323.____

WS&S:
Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626
Attn: Managing Director
Phone: 714-558-7000

9. City Officers and Employees; Non-Discrimination.

9.1 No officer or employee of the City shall be personally liable to the WS&S, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to WS&S or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 WS&S acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this Agreement nor shall WS&S enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter. WS&S warrants that WS&S has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

9.3 In connection with its performance under this Agreement, WS&S shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. WS&S shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10. Conflicts of Interest. WS&S represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the City under this Agreement. WS&S represents that no City employee or official has a material financial interest in WS&S. During the term of this Agreement and/or as a result of being awarded this contract, WS&S shall not offer, encourage or accept any financial interest in WS&S's business from any City employee or official.

11. **Files.** All legal files of WS&S pertaining to the City shall be and remain the property of City. WS&S shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at WS&S' expense, upon termination of this Agreement.

12. **Modifications to the Agreement.** Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of WS&S' professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by WS&S and paid by the City.

13. **Assignment and Delegation.** This Agreement contemplates the personal professional services of WS&S and it shall not be assigned or delegated without the prior written consent of the City. WS&S shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

14. **Legal Construction.**

14.1 This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed under the laws of the State of California.

14.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

14.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

14.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

15. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and contains all covenants and agreements between the parties with respect to such matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated in the preamble to this Agreement and represent that they are authorized to bind their respective parties.

ATTEST:

CITY OF PALM SPRINGS

By: _____
City Clerk

By: _____
Mayor

WOODRUFF, SPRADLIN & SMART

By: _____
President/Managing Director

EXHIBIT "A"

WOODRUFF, SPRADLIN & SMART Rates and Billing Practices

Hourly Rates for Legal Personnel

All Attorneys	\$225.00
Specialty Transaction (employment, environmental)	\$250.00
Specialty Litigation (eminent domain, construction)	case by case
Paralegals	\$160.00

1. **Billing Increment**

- Attorneys shall bill in increments of one-tenth of an hour (six minutes).
- Travel time will be charged at hourly rates above.
- Attorneys shall not bill for secretarial time, including time spent for document preparation, faxing, mailing, arranging for messengers, or calendaring.

Costs and Expenses

Extraordinary photocopying ¹	\$0.25 per page or actual cost if sent out
Parking at Courthouse	Actual cost
Filing fees, messenger fees	Actual cost
Jury fees, & expert fees	Actual cost
Computer research	Actual cost
Travel Costs (mileage)	No cost
Phone	No cost

¹ Must be approved in advance by the City Attorney