



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Professional Services Agreement by and between the City of Sausalito and Bertrand, Fox & Elliot

RECOMMENDED ACTION:

Approve Professional Services Agreement by and between the City of Sausalito and Bertrand, Fox & Elliot.

BACKGROUND

The City receives specialized legal services on a number of matters including personnel/labor and litigation. These services are provided on a contract basis and the City is billed by the hour. The City currently utilizes the services of Leibert, Cassidy, Whitmore (LCW) for personnel and labor/management matters. Litigation services are provided by a number of firms and of particular interest to the matter at hand "Pitchess" motions are being handled by McDonough Holland & Allen (MHA).

DISCUSSION

The attached Professional Services Agreement (Exhibit A) is with Bertrand Fox & Elliot (BFE) a law firm based in San Francisco that specializes in governmental entity defense. As set forth in the proposed Agreement, BFE will be available to provide legal services to the City on an as needed basis in the areas of labor/management relations, personnel, administrative actions, Pitchess motions and related public safety/public entity legal matters. The City will be billed by the hour for these services at the following rates:

- Partners \$190 per hour
- Associates \$165 per hour

Thomas Bertrand is the attorney who will be primarily responsible for providing the outlined legal services to the City under the proposed Agreement. Mr. Bertrand has a particular expertise in personnel/labor and police matters and works with a number of Marin County jurisdictions. Both Chief Paulin and Captain MacQuarrie have worked with Mr. Bertrand in the past and believe that it would be beneficial to have his expertise available to the Department on an as needed basis.

The City currently uses LCW for specialized services in the areas of personnel and labor/management matters. The City's current agreement with LCW went into effect in July, 2007 and includes the following hourly billing rates:

- Partners \$260.00
- Of Counsel \$240.00
- Associates \$220.00
- Paralegals \$100.00

"Pitchess" motions are motions pursuant to Evidence Code section 1043 to obtain peace officer personnel records and citizen complaints against the personnel of a department or agency that employs peace officers. The name comes from the case of *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, in which the California Supreme Court addressed the issue of the discovery of a sheriff's internal investigation records. It is fairly routine for defense attorneys to file a Pitchess motion in connection with criminal cases. These motions are defended directly by the City and are not handled by the District Attorney assigned to the underlying criminal action.

MHA currently handles Pitchess motions for the City. In FY 06-07 they represented the City on 4 Pitchess motions with an average cost of approximately \$4000.00. Bertrand Fox & Elliot is currently representing the City on a Pitchess motion under the City Manager's contract authority for a not to exceed amount of \$1200.00.

Staff believes that it will be beneficial to enter into the proposed Agreement with Bertrand Fox & Elliot to provide the City with more firms that can be utilized in connection with future special legal services. Both MHA and LCW will also continue to be available to the City.

FISCAL IMPACT

The cost of BFE's services will be billed to budget line item 100-190-3000-323 which includes \$45,000 for other legal services (\$20,000 for litigation, \$25,000 for personnel/labor). To date approximately \$8000 has been expended from this line item leaving a balance of \$37,000.

STAFF RECOMMENDATIONS

1. Staff recommends that the City Council approve the Professional Services Agreement by and between the City of Sausalito and Bertrand, Fox & Elliot and authorize the Mayor to execute the Agreement on behalf of the City.

2. If the Council elects not to approve the Agreement specialized legal services in the area of personnel and police matters (particularly Pitchess motions) will continue to be assigned to Leibert, Cassidy and Whitmore and McDonough Holland & Allen at their respective contractual rates.

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ATTACHMENTS

1. Proposed Professional Services Agreement by and between the City and Bertrand Fox and Elliot.
2. Bertrand Fox and Elliot firm resume.

PREPARED BY:

Mary Anne Wagner, City Attorney

SUBMITTED BY:

Adam Politzer, City Manager

EXHIBIT A

**CITY OF SAUSALITO
PROFESSIONAL/CONSULTING SERVICES AGREEMENT**

This **PROFESSIONAL/CONSULTING SERVICES AGREEMENT**, (this "Agreement") is made and entered into this 14th day of November, 2007, by and between the **CITY OF SAUSALITO**, a municipal corporation (hereinafter "City") and Bertrand, Fox & Elliot (hereinafter "Consultant").

In consideration of the mutual promises contained herein, the parties hereto agree as follows:

Section 1. Scope of Work

Consultant shall provide City with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full.

The duties and services required of Consultant under this Agreement and pursuant to this Section 1 are referred to throughout the remainder of this Agreement as "the Work."

Section 2. Responsible Individual. The individual directly responsible for the performance of the duties of Consultant is Thomas Bertrand, Esq. Consultant represents and warrants that the execution of this Agreement has been approved by Consultant and that person executing this Agreement on behalf of Consultant has the full authority to do so.

Section 3. Work Schedule.

Consultant shall be available to work as many hours as required to complete the Work immediately upon receipt of the signed Agreement from the City and shall complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.

Section 4. Compensation.

In consideration of the performance of the Work described in Section 1 pursuant to the schedule set forth in Section 3, Consultant shall be compensated at the rate set forth in Exhibit B which is attached hereto and incorporated herein as though set forth in full. Consultant shall not charge City for any administrative expenses or overhead, including without limitation, facsimile, mileage and other/or any other expenses incurred by Consultant in connection with Consultant's provision of the Work. Consultant acknowledges and agrees that the compensation to be paid to Consultant under this

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Section 4 represents the full amount due and owing to Consultant in connection with performance of the Work.

Section 5. Amendments.

In the event City desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this Agreement, specifications of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

Section 6. Independent Contractor - Subcontractors.

It is specifically understood and agreed that in the making and performance of this Agreement, Consultant is an independent contractor and is not and shall not be construed to be an employee, common law employee, agent or servant of City. The consultant shall be solely liable and responsible to pay all required taxes and other obligations, including, but not limited to, withholding and Social Security. Consultant acknowledges and agrees that he/she is not entitled to the benefits of civil service status and/or the rights and privileges enjoyed by civil service employees and Consultant hereby waives any and all claims to such rights and/or privileges.

Section 7. Consultant's Responsibility.

It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that City relies upon the professional skills of the Consultant to do and perform the Work in a skillful and professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work.

Acceptance by City of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment, the Work can and shall be completed for a fee within the amounts set forth in Section 3 of this Agreement.

Section 8. Hold Harmless and Indemnification.

Consultant shall indemnify, defend and save City, its officers, elected and appointed officials, employees, contractors and agents harmless from and against any and all liability, claims, suits, actions, damages and/or causes of action of any kind arising out of any bodily injury, personal injury, property damage or in violation of any federal, state or municipal law or ordinance or other cause in connection with the activities of Consultant, or on account of the performance or character of the Work or otherwise related to its performance of this Agreement to the extent that any such liability, claims, suits, actions, damages and/or causes of action arises out of the intentional, negligent or willful misconduct of the Consultant.

Section 9. Insurance.

Consultant shall take out and maintain during the life of the Contract professional liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.

Section 10. Nondiscrimination.

There shall be no discrimination against any employee who is employed in the Work, or against any applicant for such employment because of race, religion, color, sex or national origin. This provision 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.

Section 11. City Personnel Conflict of Interest.

No officers, member, or employee of City and no member of the governing body of City who exercises any functions or responsibilities in the review, approval of the undertaking or carrying out of the project, shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which she is, directly or indirectly interested; nor shall any such officer, member or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 12. Consultant Conflict of Interest.

Consultant covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. Consultant further covenants that in the performance of this Agreement, no persons having any such interest shall be employed.

Section 13. Assignment.

Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of City.

Section 14. Ownership of Documents.

Consultant agrees that all documents produced in the performance of this Agreement shall be the sole property of the City including all rights therein of whatever kind and whether arising from common or civil law or equity. The Work shall be used solely for the project for which it was originally intended.

Section 15. Termination.

City may terminate this Agreement at any time without reason stated or required by giving written notice of the same and specifying the effective date thereof, at least seven calendar days before the effective date of such termination. If the Agreement is terminated by City as provided herein, Consultant shall be paid for all effort and material expended on behalf of the Work under the terms of this Agreement, less any charges against Consultant as otherwise provided herein, up to the effective date of termination, except that upon notification of such termination, Consultant shall immediately cease to undertake any duties under the Agreement not yet underway, and shall limit its further activities up to the effective date of termination to those duties necessary to wind up work then underway.

In Witness Whereof, City and Consultant have executed this Agreement as of the date first written above.

City of Sausalito

Consultant

By: D. Michael Kelly, Mayor

By: Thomas Bertrand, Esq.

approved as to form:

Mary Anne Wagner
City Attorney

EXHIBIT A

SCOPE OF WORK

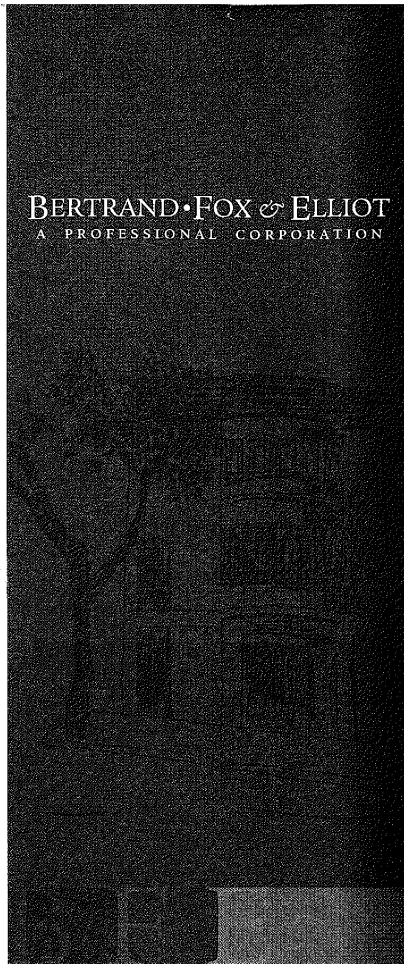
Bertrand, Fox & Elliot shall directly provide legal services to City and its Police Department on an as-needed/requested basis, in the areas of labor/management relations, personnel issues, administrative actions, Pitchess motions and related public safety/public entity legal matters. These legal services shall be in addition to and separate from that representation provided the City in litigation cases assigned by the Marin JPA.

EXHIBIT B

FEE SCHEDULE

No retainer is required or agreed to under this Agreement. Consultant shall be paid solely on an hourly basis, and consistent with the provisions of Section 4 of this Agreement, as follows: \$190 per hour for partners and \$165 per hour for associates. Consultant shall bill City monthly, providing detailed, itemized billing statements.

EXHIBIT B



BERTRAND • FOX & ELLIOT

The firm was formed in 1986 when experienced Bay Area trial attorney Tom Bertrand teamed with Greg Fox, then a lead trial attorney in the San Francisco City Attorney's office. Two years later, in 1988, Gene Elliot left his position as a senior trial team leader with the San Francisco City Attorney's office to join the firm.

From the beginning, the practice was devoted to civil litigation, with an emphasis on representing public entities. For close to twenty years, Bertrand, Fox & Elliot has continued to set a standard of excellence in this area. The firm has a unique understanding of the complex issues facing public entities today.

While many firms claim to be experts in litigation, the attorneys at Bertrand, Fox & Elliot are proven trial attorneys with demonstrated courtroom expertise and success. The members of the firm have collectively tried more than one hundred jury trials to verdict. Their experience extends beyond public entity defense, and includes practice areas such as complex commercial litigation and employment litigation. The firm's recognized proficiency in trial work adds to its effectiveness, as well, in negotiation of settlements short of trial, when in the clients' interest.

Bertrand, Fox & Elliot is located at Aquatic Park near Fisherman's Wharf in San Francisco, a location from which it conveniently serves clients throughout the Bay Area. In recent years, the firm's practice has grown to include matters arising in other regions of California and in neighboring states. Its members regularly appear in state and federal courts throughout California. Bertrand, Fox & Elliot is AV-rated (highest rating) by the national law directory, Martindale-Hubbell.