

CITY OF CUPERTINO

Request for Proposals Contract City Attorney Services



December 21, 2018

The City Council of the City of Cupertino is requesting interested full-service law firms with experience advising and representing California municipalities to submit Statements of Qualifications and Proposals to provide contract legal services as City Attorney to the City.

Background

City and City Government. Cupertino is a General Law City operating under a Council-Manager form of government which serves a community of just over 64,000 residents. Five Councilmembers elected at large for a four year term and a two-term limit appoint the City Manager, who is responsible for the strategic direction and day-to-day operations of the City. The City Council appoints and is supported by ten Commissions and six Committees covering a variety of subject matters. Municipal services provided include, streets, parks, storm drains and facilities maintenance, engineering, community development, recreation and administrative services. Police services are contracted with the Santa Clara County Sheriff's Office. Fire protection is provided by the Santa Clara County Central Fire Protection District. Garbage and recycling services are also contracted.

The City is fiscally strong, in part due to conservative and prudent fiscal planning. With a one-year budget cycle, the City's current total annual budget is \$131.7 million (including CIP), which funds 248 full-time equivalent positions. The Mission of the City of Cupertino is to provide exceptional service, encourage the community engagement, and support the values of education, innovation and collaboration.

The City Council has regular meetings on the second and fourth Tuesday of each month which begin at 6:45 p.m. In addition, the Council may schedule closed sessions, joint sessions or study sessions before, during, or after the regular meetings of Council.

The work of the City Attorney. Appointed by the Council, the City Attorney reports to the City Council and provides legal support to the City Council, City Manager and Department Directors. The successful applicant must possess a strong generalist background in municipal law with emphasis on governmental issues, contracts, transportation, public works, planning and land use. She or he will advise on issues regarding resolutions, ordinances, leases, zoning, code enforcement, contracts, policies, procedures, sale and purchase agreements, numerous planning-related matters, Brown Act, conflict of interest, ethics, Public Records Act and various agreements relevant to construction and municipal government. The City Attorney also monitors changes in pertinent state and federal legislation, regulations, case law and updates the Council and City Manager as appropriate.

Upon request by the City Manager or Council, the City Attorney may be secondarily involved with outside legal counsel in matters related to employment law, workers' compensation, labor negotiations, bond counsel, real estate transactions, government tort claims filed against the City and general liability litigation covered by the City's Joint Powers Association (JPA) pool providers. These areas do not comprise the primary responsibilities of the City Attorney. However, the City Attorney will be apprised of such matters as is relevant to his or her duties as the City Attorney.

The initial period of contract services will be one year with annual renewals contemplated based on a mutually agreeable working relationship. The City Attorney serves at the pleasure of the Council and may be removed at any time with thirty-day notice by the vote of a majority of the City Council.

Request for Proposals (RFP)

The City Council is seeking proposals from full-service law firms with substantial experience in advising and representing California cities for contract city attorney services on a set retainer fee basis.

1. Scope of services. Legal services shall include those generally understood within the field of municipal law to fall within the category of “general counsel” work and shall include, but not necessarily be limited to, the following:
 - 1.1 Representation of and advice to the Council, committees and commissions and all City officials in legal matters of municipal government
 - 1.2 Attendance at all City Council meetings, unless excused by Mayor or Council (attendance at special meetings or study sessions and closed sessions)
 - 1.3 Available to attend up to twelve meetings per year of commissions, public forums, training sessions such as commission trainings on the Brown Act
 - 1.4 Consultation with City Manager, City staff, or authorized representatives to provide legal advice on proposed policies and activities
 - 1.5 Implement directed communications by City Manager in response to members of the public and press/media
 - 1.6 Preparation/review of all proposed ordinances, resolutions, contracts and other documents pertaining to City business
 - 1.7 Code enforcement including filing complaints or administrative proceedings for litigation
 - 1.8 Available to assist with personnel issues (excluding collective bargaining) in coordination with employment law counsel and with general liability claims and litigation in coordination with JPA legal counsel
 - 1.9 Keep the Council and City Manager informed of the status of litigation involving City. Attorney shall submit a quarterly status report briefly outlining the status of each litigation, including code enforcement litigation. This status report shall be submitted between the first and fifteenth of the following months (April, July, October and January). Attorney shall also advise the City Council and City Manager of significant developments in litigation involving City as they occur.

- 1.10 Provide written legal opinions when requested by a majority of City Council
- 1.11 Assist with management of outside legal counsel and provide advice on available options for City Council or City Manager consideration
- 1.12 Manage all attorney correspondence reproductions, Public Records Act responses, mailing and miscellaneous expenses for communications with City
- 1.13 Assist City Council and appropriate staff in continuing to identify feasibility options toward implementing and achieving the goals, policies and objectives of the City Council
- 1.14 Consultation with individual City Council members on questions regarding City legal matters as it relates to them as Council members and City business
- 1.15 Available at City Hall for office hours twenty-four hours per week as is needed
- 1.16 Litigation services to include court and administrative proceedings of every type or nature and includes client conferences, file and report reviews, interviews, legal research, site visits and discussions with witnesses and experts prior to formal proceedings
- 1.17 Provide defense litigation for all actions and other proceedings brought against City, its elected officials, appointed officers and agents, except for JPA provided defense for general liability matters. In cases of unusual significance or complexity, retention of additional outside counsel can be approved by City Council
- 1.18 Prosecution for violations of the Municipal Code and enforcement litigation will be compensated at a predetermined billable rate plus costs customarily charged to clients
- 1.19 Legal services that constitute a special project as assigned by City Council would be provided on a contracted hourly basis beyond the established retainer fee
- 1.20 The City will provide temporary office space to a contract City Attorney for office hours at City Hall
- 1.21 City Council will conduct a review of the contract City Attorney performance

on a six-months basis for the first year of commencing service

- 1.22 Upon the termination of the Contract City Attorney Services Agreement, all files pursuant to City business and legal activities will be returned to the City within thirty days of notice of termination of the Agreement
- 1.23 The City will require the firm with which a contract is established, prior to commencement of work, to provide evidence of appropriate general liability, errors and omissions, malpractice insurance, Workers' Compensation insurance, auto insurance, etc. to indemnify the City as needed
- 2 Firm's qualifications. Please describe the firm's qualifications for providing legal services. Include in your response:
 - 2.1 Name of the partner(s)/associate(s) who would be designated as the contract City Attorney and her or his overall capabilities, qualifications, training and areas of expertise from the areas listed below. The name(s) of the person likely to be assigned to substitute for the City Attorney when he or she is not available. Include this attorney's overall capabilities, qualifications, training and areas of expertise
 - 2.2 Include resumes for all attorneys named
 - 2.3 Requested information should include:
 - a. Length of employment with firm
 - b. Specialization
 - c. Legal training
 - d. Scholastic honors, awards and professional affiliations
 - e. Date of admittance to California Bar
 - f. Years of practice
 - g. Municipal or other local public sector experience
 - h. Years of experience as a City Attorney, with cities represented, and references for each city
 - i. Knowledge of, and experience with California Municipal Law; what percentage of practice represents municipal law, and statement of other types of clientele represented
 - j. Litigation experience and track record
 - k. Knowledge and practice of law relating to land use and planning including CEQA, general plans, condemnation/eminent domain, development, zoning, real estate, environmental issues, hazardous waste,
 - l. Knowledge and practice of law relating to telecommunications, code enforcement and, construction law/public works/prevaling wage

- matters and other general municipal law related matters;
- m. Experience in the area of contracts, public purchasing and public/private partnerships, annexations
 - n. Experience in the areas of taxes, fees and charges such as sewer and waste disposal service charges and rates
 - o. Experience in public contracting for planning, construction, operations of public facilities such as street, water, sanitary sewer, storm drainage issues
 - p. Experience in the preparation and review of memoranda, contracts, ordinances and resolutions
 - q. Experience in the area of the Public Records Act, the Brown Act, the Political Reform Act and conflicts of interest, and Elections Code
 - r. Experience in negotiating agreements and resolving disputes
 - s. Whether the partner/principal or likely associates have ever been successfully sued for malpractice, been the subject of complaints filed with the State Bar, or had discipline imposed by the State Bar. Please provide any information on the nature of the incident, dates concluded and results of the situation
 - t. Describe any work, whether by subject area or nature of work, which would not be covered by services rendered under the retainer fee
 - u. Date by which contract City Attorney is available to commence full services to the City in the role of City Attorney
 - v. Propose how contract City Attorney will achieve on-site office hours for twenty-four hours per week. Please disclose any political contributions or in-kind services or loans made to any member of the City of Cupertino Council, either directly or thru third parties within the last five years by the applicant law firm and all of its attorneys
 - w. Please list all public clients for which your firm currently provides legal services. Please list all public clients for which your firm has provided services over the last five years and if necessary, private clients wherein a conflict may arise if the firm represents the City
 - x. Please provide a list of companies in or doing business in the City of Cupertino for which you had or have provided services during the last 5 years that exceeded \$20,000
 - y. Please provide a monthly retainer fee proposed for compensation for the above legal services. For those projects assigned by Council, please propose a billable hourly rate and specific expenses for which the firm will claim reimbursement including type and unit rate (i.e. rate for mileage, reproduction of documents, travel expenses).

For your reference, attached to the RFP, are sections of the City of Cupertino Municipal Code related to provisions for retention and functions of the City Attorney (*see*

Attachment)

Submittal Guidelines

Firms who will be submitting a proposal should notify the City by no later December 28, 2018 and confirm their availability to meet on Tuesday January 8, 2018 beginning at 5:30 p.m. Proposals should be submitted no later than January 4, 2019.

Proposals must be submitted:

- Electronically to the interim City Manager, Amy Chan, at amyc@cupertino.org by 5:30 p.m. on Thursday January 3, 2019.
- With one hard copy of the proposal to be received no later than Monday January 7, 2019. in a sealed envelope bearing the caption: "City of Cupertino– Proposal for City Attorney Legal Services" addressed to:

Amy Chan, Interim City Manager
City of Cupertino
10300 Torre Ave
Cupertino, CA 95014

The City Council will conduct interviews with interested firms on January 8, 2019 beginning at 5:30 p.m. at the City of Cupertino City Hall.

All inquiries regarding this RFP and current legal services in the City should be directed to Amy Chan, Interim City Manager, at the above address or by telephone at (408) 777-1312 or by email at amyc@cupertino.org

The City reserves the right to reject all proposals; to request additional information concerning any proposal; to accept or negotiate modifications to any proposal; to interview any proposer; and to waive any irregularities in any proposal submission deadline date in order to serve the best interests of the City.

On behalf of the City of Cupertino, thank you for your consideration and efforts in responding to our RFP.

CHAPTER 2.18: CITY ATTORNEY

Section

- 2.18.010 Office of the City Attorney established.
- 2.18.020 Function and duties.
- 2.18.030 Council–Attorney relations.
- 2.18.040 Attorney-staff relations.
- 2.18.050 Relations between Attorney and individual members of the public.
- 2.18.060 Bond.
- 2.18.070 Acting City Attorney.
- 2.18.080 Agreements on employment.
- 2.18.090 Assistants and employees.
- 2.18.100 Eligibility.
- 2.18.110 Suspension–Removal–Resignation.

2.18.010 Office of the City Attorney Established.

A. The office of the City Attorney, as set forth in Government Code Section 36505, is established. The City Attorney shall be appointed by the City Council wholly on the basis of his or her qualifications. The City Attorney shall hold office for and during the pleasure of the City Council.

B. The office of the City Attorney shall consist of the City Attorney and such assistants as may be authorized by the Council.

C. The City Attorney shall administer the office, be responsible for the successful performance of its functions, and shall serve under the direct supervision and control of the Council as its legal advisor.

D. The Council may retain or employ other attorneys, assistants, or special counsel as may be needed to take charge of any litigation or legal matters or to assist the City Attorney therein.

(Ord. 1673, § 1 (part), 1994)

2.18.020 Function and Duties.

The functions of the office of the City Attorney shall be to:

A. Advise the Council and all City officers in all matters pertaining to their offices;

B. Furnish legal services at all meetings of the Council, except when excused or disabled, and give advice or opinions on the legality of all matters under consideration by the Council or by any of the boards, commissions, committees or officers;

C. Prepare and/or approve all ordinances, resolutions, agreements, contracts, and other legal instruments as shall be required for the proper conduct of the business of the City and approve the form of all contracts, agreements, and bonds given to the City;

D. Provide the necessary legal services required in connection with the acquisition of land or easements on behalf of the City;

E. Subject to the general direction of the Council, prosecute and defend the City, and all boards, officers and employees in their official capacities, all civil proceedings before judicial and quasi-judicial tribunals. The City Attorney shall not compromise, settle or dismiss any action for or against the City without permission of the City Council. Nor shall the City Attorney commence any civil action without the permission of the Council.

F. Prosecute all violations of City ordinance; provided, however, that the City Attorney is not required to prosecute any misdemeanor or infraction within the City arising out of a violation of State law.

(Ord. 1673, § 1 (part), 1994)

2.18.030 Council-Attorney Relations.

Individual Councilmembers may seek and obtain legal advice from the City Attorney on any matter or matters pertaining to the legal position of the City. Any such advice given to individual Councilmembers, however, may be repeated to the entire Council at any regular or special Council meeting. With respect to advice to individual Councilmembers regarding potential conflicts of interest, the City Attorney may render informal advice; provided, however, that it is understood that a Councilmember is automatically protected from potential liability for conflict of interest only upon taking action which conforms to a written opinion issued by the California Fair Political Practices Commission.

(Ord. 1673, § 1 (part), 1994)

2.18.040 Attorney-Staff Relations.

Periodically, but not less than once per year, the City Attorney and the City Manager will meet and confer in good faith regarding the allocation of the City Attorney's time among City departments.

(Ord. 2033, § 1, 2008; Ord. 1673, § 1 (part), 1994)

2.18.050 Relations Between Attorney and Individual Members of the Public.

Consistent with the functions and duties of the City Attorney's office described in Section 2.18.020 of this chapter, the City Attorney or the Assistant City Attorney may, but is not required, to meet or discuss any matter with individual members of the public, legal counsel, or the media.

(Ord. 1673, § 1 (part), 1994)

2.18.060 Bond.

The City Attorney shall furnish a corporate surety bond to be determined and approved by the City Council, and shall be conditioned upon the faithful performance of the duties imposed upon the City Attorney as prescribed in this chapter. Any premium for such bond shall be a proper charge against the City.

(Ord. 1673, § 1 (part), 1994)

2.18.070 Acting City Attorney.

A. The Assistant City Attorney shall serve as City Attorney pro tempore during any temporary absence or disability of the City Attorney.

B. In the event there is no Assistant City Attorney, the Council shall appoint a qualified attorney to act as City Attorney pro tempore.

(Ord. 1673, § 1 (part), 1994)

2.18.080 Agreements on Employment.

The terms and conditions of employment of the City Attorney shall be established by ordinance or resolution. If the City Attorney is a full time employee, any employment agreement between the City and the City Attorney shall contain a provision for performance evaluations of the City Attorney to be conducted by the City Council at least once per calendar year. If the City Attorney is an independent contractor, the City Council shall endeavor to provide periodic feedback regarding the performance of the independent contractor. (Ord. 2040 § 1, 2009; Ord. 2033 § 2, 2008; Ord. 1673, § 1 (part), 1994)

2.18.090 Assistants and Employees.

Notwithstanding the provision of Section 2.52.100 of the Municipal Code, but subject to the other applicable provisions of Chapter 2.52, the City Attorney shall appoint, discipline and remove all assistants, deputies, and employees under his or her authority.

(Ord. 1673, § 1 (part), 1994)

2.18.100 Eligibility.

No person elected or appointed as a Council-person of the City shall, subsequent to taking office as Councilperson, be eligible for appointment as City Attorney until one year has elapsed after the Councilmember has ceased to be a member of the City Council.

(Ord. 1673, § 1 (part), 1994)

2.18.110 Suspension–Removal–Resignation.

A. The removal of the City Attorney shall be only on a majority vote of the entire City Council.

B. The City Attorney may resign from his or her position upon at least four weeks' written notice to the City Council.

(Ord. 2096, 2012; Ord. 1673, § 1 (part), 1994)