

Item No. 10

“To Be Delivered” Material

For

City of Sacramento

City Council

Housing Authority

Redevelopment Agency

Economic Development Commission

Sacramento City Financing Authority

Agenda Packet

Submitted: March 2, 2006

For the Meeting of: March 7, 2006 (Afternoon)

The attached materials were not available at the time the Agenda Packet was prepared.

Subject: Approval of Agreement For Legal Services With Morrison and Foerster Regarding the Greenbriar Project

Contact: Lezley Buford, Principal Planner, Environmental Services 808- 5395

Richard E. Archibald, Assistant City Attorney 808-5346

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REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

STAFF REPORT
March 7, 2006

Honorable Mayor and
Members of the City Council

**Subject: APPROVAL OF AGREEMENT FOR LEGAL SERVICES WITH
MORRISON AND FOERSTER REGARDING THE GREENBRIAR
PROJECT**

Location and Council District: District One

Recommendation:

It is recommended that the City Council authorize the City Attorney to enter into the Second Amendment to the Legal Services Agreement with Morrison and Foerster, to provide legal services to the City with regard to the Greenbriar project, in an amount not to exceed \$170,000. The City is being reimbursed the costs of this agreement by the Greenbriar project applicant.

Contact: Lezley Buford, Principal Planner, Environmental Services 808-5395
Richard E. Archibald, Assistant City Attorney 808-5346

Department: City Attorney's Office and Planning, Environmental Services Division

Organization Nos: 0500 and 4828

Summary:

This report seeks authorization to contract for the continued legal services of Morrison & Foerster, in the Greenbriar project. Morrison and Foerster has extensive experience in the North Natomas area, including the development of the Natomas Basin Habitat Conservation Plan, and has extensive experience in the issues presented by the Greenbriar project under the federal and state Endangered Species Acts. The Greenbriar project applicant was advised that the City would retain outside legal counsel to advise the City with regard to issues relevant to the Greenbriar project, and agreed to reimburse the City for the costs incurred by the City in doing so. The cost of the services to be provided by Morrison and Foerster will exceed \$100,000, and it is therefore appropriate and necessary to seek Council approval.

Subject: Approval of Agreement for Legal Services with Morrison and Foerster
Regarding The Greenbriar Project

Committee/Commission Action: None

Background Information:

As noted above, Morrison and Foerster has extensive experience in the North Natomas area, including assisting the City in the development of the Natomas Basin Habitat Conservation Plan; it also has extensive experience in the issues presented by the Greenbriar project under the federal and state Endangered Species Acts.

Because of Morrison and Foerster's experience in North Natomas, and because the Greenbriar project raises many of the same issues that Morrison and Foerster has assisted the City in addressing previously, the Greenbriar project applicant was advised that the City would retain outside counsel, and agreed to reimburse the City for the costs of legal services provided by Morrison and Foerster. The City entered into a legal services agreement with Morrison and Foerster in October 2005 in the amount of \$50,000, and entered into a first amendment to this agreement on December 21, 2005, to increase the amount of the agreement to \$90,000. The proposed second amendment will increase the maximum amount to \$170,000.

The Greenbriar application has the potential to implicate past Council actions, including the approval of Habitat Conservation Plan (HCP). Given Morrison and Foerster's history in assisting the City in preparing the HCP, and then in assisting the City in successfully defending legal challenges to the HCP brought under the federal and state Endangered Species Acts as well as CEQA and NEPA, it would be appropriate to continue to utilize their experience and expertise.

Financial Considerations:

The City will be reimbursed the costs of legal services provided by Morrison and Foerster by the project applicant.

Environmental Considerations:

Approval of the agreement is not subject to the California Environmental Quality Act (CEQA), because it can be seen with certainty that there is no possibility that such approval may have a significant effect on the environment (CEQA Guidelines §15061(b)(3)).

Policy Considerations:

Morrison and Foerster's continued participation in the Greenbriar proposal for development in the North Natomas region will assist the City in ensuring that the project

Subject: Approval of Agreement for Legal Services with Morrison and Foerster Regarding The Greenbriar Project

is properly analyzed, including its potential impact on the adequacy and efficacy of the Habitat Conservation Plan. Morrison and Foerster is on the City Attorney's list of approved outside counsel.

Emerging Small Business Development (ESBD):

Morrison and Foerster LLP is not certified by the City as a Small Business Enterprise.

Respectfully submitted by:


EILEEN M. TEICHERT
City Attorney


LEZLEY BUFORD
Principal Planner
Environmental Services

Recommendation Approved:


for RAY KERRIDGE
Interim City Manager

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SECOND AMENDMENT TO AGREEMENT FOR LEGAL SERVICES

This Second Amendment to Agreement for Legal Services is entered into by and between THE CITY OF SACRAMENTO AND MORRISON AND FORESTER, LLP, this ___ day of March, 2006.

RECITALS

A. The CITY OF SACRAMENTO ("CITY") and MORRISON AND FORESTER, LLP. ("ATTORNEYS") entered into an agreement for legal services in October, 2005, and entered into a First Amendment to that Agreement on December 21, 2005. Pursuant to that agreement, as amended, ATTORNEYS are providing legal advice and services concerning the Greenbriar project.

B. There is a continuing need for the services of ATTORNEYS on the Greenbriar project, and the nature and amount of services to be provided by ATTORNEYS will exceed the amount of the original agreement. It is therefore necessary and appropriate to amend the agreement to provide for additional services.

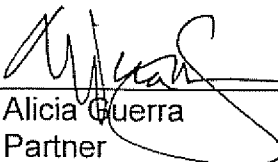
AGREEMENT

1. The agreement for legal services is amended as follows: the total maximum amount payable as specified in paragraph 3 of the agreement is increased by Eighty Thousand Dollars (\$80,000.00), so that the total maximum amount payable is One Hundred and Seventy Thousand Dollars (\$170,000.00).
2. Except as amended by paragraph 1 above, the terms and conditions of the legal services agreement remain unchanged and in effect.

DATED: _____
CITY OF SACRAMENTO, a
municipal corporation

DATED: 2/23/2006
MORRISON AND FORESTER, LLP.

By _____
Richard E. Archibald
Assistant City Attorney

By  _____
Alicia Guerra
Partner

FIRST AMENDMENT TO AGREEMENT FOR LEGAL SERVICES

This First Amendment to Agreement of Legal Services is entered into by and between THE CITY OF SACRAMENTO AND MORRISON AND FORESTER, LLP, this 21st day of December, 2005.

RECITALS

A. The CITY OF SACRAMENTO ("CITY") and MORRISON AND FORESTER, LLP. ("ATTORNEYS") Morrison and Forester entered into an agreement for legal services in October, 2005. Pursuant to that agreement, ATTORNEYS are providing legal advice and services concerning the Greenbriar project.

B. There is a continuing need for the services of ATTORNEYS on the Greenbriar project, and the nature and amount of services to be provided by ATTORNEYS will exceed the amount of the original agreement. It is therefore necessary and appropriate to amend the agreement to provide for additional services.

AGREEMENT

1. The agreement for legal services is amended as follows: the total maximum amount payable as specified in paragraph 3 of the agreement is increased by Forty Thousand Dollars (\$40,000.00), so that the total maximum amount payable is Ninety Thousand Dollars (\$90,000.00).

2. Except as amended by paragraph 1 above, the terms and conditions of the legal services agreement remain unchanged and in effect.

DATED: 12/21/2005
CITY OF SACRAMENTO, a
municipal corporation

DATED: [Signature]
MORRISON AND FORESTER, LLP.

By Richard E Archibald ^{12/21/05} By _____
Richard E. Archibald
Assistant City Attorney

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AGREEMENT FOR LEGAL SERVICES

This Agreement is made by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY") and **MORRISON AND FORESTER, LLP** ("ATTORNEYS"),

RECITALS

- A. CITY is in need of attorneys to represent and advise it in matters pertaining to the project known and referred to as Greenbriar, a project consisting of approximately 517[±] acres currently located in the unincorporated area of Sacramento County that seeks to annex to the City and proceed with urban development. CITY is also in need of attorneys to represent and advice it in matters pertaining to other potential applications for annexation and urban development that may be filed by other owners of property in the unincorporated area of Sacramento County.
- B. ATTORNEYS are familiar with the history of the development of the Natomas Basin Habitat Conservation Plan and related approvals, and the litigation concerning that plan and related approvals.
- C. ATTORNEYS are knowledgeable and experienced in the areas of state and federal law pertaining to endangered species. CITY
- D. CITY is interested in retaining ATTORNEYS to provide legal advice and services as set forth below and ATTORNEYS are willing to provide such advice and services.

AGREEMENT

The parties agree as follows:

1. CITY employs and retains ATTORNEYS to advise, assist and represent CITY concerning the Greenbriar application and the other matters identified in the Recitals above (hereinafter referred to as "the Matter"), and to provide the following services: familiarize themselves with the legal and factual issues surrounding the Matter; consult with City staff concerning the Matter, and provide legal advice on issues as requested; assisting CITY staff as requested in the presentation of information to the City Council and other bodies; and other tasks as applicable.
2. CITY shall compensate ATTORNEYS for legal services rendered at the hourly billing rates set forth in Attachment A hereto and incorporated herein by this reference, said time to be billed in tenths of an hour. CITY shall not be charged for services that are strictly of a clerical or secretarial nature, such as scheduling meetings

or arranging telephone conference calls. ATTORNEYS shall be entitled to amend their hourly billing rates once per calendar year, and shall provide the CITY thirty (30) days' notice of any amendments to their hourly billing rates.

Such compensation shall be the sole and total remuneration for the rendition of services under this Agreement.

3. Subject to amendment by the parties, approved in writing in the manner required by law, the maximum payable by CITY to ATTORNEYS under this contract for services and expenses shall be \$ 50,000.00 (Fifty thousand dollars). City anticipates that this amount should be sufficient for ATTORNEYS to provide the services identified above; to the extent additional services and expenses are required on this Matter, an amendment authorizing the additional services and expenses shall be required. Services by ATTORNEYS in addition to services in connection with the Matter shall be at the discretion of CITY and compensation therefore shall be the subject of a separate and future agreement for legal services entered prior to the performance of such additional services.

4. Copies of all documents prepared by ATTORNEYS shall be furnished to the City Attorney's Office in hard copy form and, upon request, in a word processing format compatible with that used by the City Attorney's office (typically WordPerfect or Word formats) or if none, then ASCII format. The City Attorney's Office shall receive copies (cc's) of all correspondence prepared by ATTORNEYS. In addition, ATTORNEYS shall be accessible to the attorney staff of the City Attorney's office to answer questions and to provide information as to further such staff's knowledge and experience with respect to legal issues concerning the Matter. City Attorney staff shall have the option of accompanying ATTORNEYS to meetings to further staff's exposure to such legal issues.

5. CITY shall reimburse ATTORNEYS for the actual, reasonable and necessary expense of travel, provided such travel is approved in advance. Mileage shall be reimbursed at 48.5 cents per mile. ATTORNEYS shall be compensated for one-half of their time spent traveling in performance of services under this contract; provided that, absent CITY approval in advance, only one attorney shall be entitled to bill for travel time. CITY shall reimburse ATTORNEYS for the actual, reasonable costs of long distance telephone calls and for photocopying at \$0.15 per page. CITY shall reimburse ATTORNEYS or pay directly additional costs or expenses incurred in

performance of this Agreement provided such costs or expenses are approved in advance by CITY, which approval shall be in City's sole discretion.

6. ATTORNEYS certify that they accept this employment because they have the time, energy and ability necessary to perform the duties required in an efficient, trustworthy and businesslike manner.

7. During the term of this Agreement, ATTORNEYS shall maintain in effect the following policies of insurance:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
<u>Workers' Compensation.</u>	Statutory
<u>Comprehensive General Liability,</u> including endorsements for completed operations, contractual, independent contractors, broad form property damage and personal injury.	Bodily Injury: \$500,000 each occurrence \$1,000,000 aggregate Property Damage: \$250,000 each occurrence Personal Injury: \$500,000 each occurrence \$1,000,000 aggregate
<u>Comprehensive Automobile Liability,</u> including endorsements for owned, hired, and non-owned vehicles.	Bodily Injury: \$500,000 each occurrence \$300,000 aggregate Property Damage: \$100,000 each occurrence \$500,000 each occurrence \$1,000,000 aggregate
<u>Professional Liability</u> (errors and omissions).	\$500,000 each occurrence \$1,000,000 aggregate

ATTORNEYS shall provide a certificate of insurance evidencing each coverage in a form satisfactory to the City Attorney. Such certificate shall provide a minimum of thirty (30) days written notice prior to any modification or termination of the required insurance. Any insurance written on a "claims made" basis is subject to the approval of the City Attorney.

8. ATTORNEYS certify that they have no personal or financial interest in, nor any connection with, the transactions which are or will be the subject of this Agreement, or with any of the personnel, officers, agents or employees of the parties to such transactions.

9. ATTORNEYS represent and warrant that they have followed internal protocol to determine whether there are any actual or potential conflicts of interest that would preclude or interfere with ATTORNEYS' performance of this Agreement.

a. Scope of Engagement. From time to time ATTORNEYS represent certain owners of property located both within and outside the boundaries of the Natomas Basin HCP, including but not limited to, The Cambay Group, Inc. ("Cambay"), Alleghany Properties, Inc. and Sacramento Properties Holdings, Inc. (collectively, "API"), Lennar Homes and Lennar Partners ("Lennar"), AKT, Woodside Homes, Richland Planned Communities ("Richland") and their respective affiliates ("Natomas Landowners"). ATTORNEYS often represent the Natomas Landowners and other owners of real property in development and land use matters within the City and surrounding areas (whether involving business transactions, counseling, litigation or otherwise), and such assistance may include, among other things, advising such owners with respect to their obligations under the Natomas HCP or land use, subdivision and other permits or approvals that may be or have been issued by the City (with such other development matters being referred to as the "Other Development-Related Matters"). Further, from time to time, ATTORNEYS also have advised the Natomas Basin Conservancy ("TNBC") regarding its responsibilities under the revised Natomas Basin HCP. ATTORNEYS request that CITY waive any conflict of interest, and CITY hereby waives such conflict of interest that may arise in connection with, and agrees not to seek ATTORNEYS disqualification from, representation of the Natomas Landowners or any other entity in any other matters that are not substantially related to the Matter.

b. Waiver of Future Conflicts. ATTORNEYS hereby request and CITY hereby agrees that, in light of ATTORNEYS' limited representation of City pursuant to this Agreement, ATTORNEYS are free to represent other current and future clients, including, but not limited to, the Natomas Landowners and TNBC, and take positions adverse to the City, in connection with (a) the Other Development-Related Matters and (b) any other matters or any other issues (whether involving the same substantive areas of law which are involved in the Matter or some other unrelated areas, and whether involving business transactions, counseling, litigation or otherwise), so long as such other matters and other issues are not substantially related to the Matter or other matters for which the CITY may hereafter retain ATTORNEYS ("Additional Matters").

Since such engagements in connection with the Other Development-Related Matters and Additional Matters may put ATTORNEYS in a position adverse to the CITY from time to time, ATTORNEYS request that CITY, and CITY hereby agrees, to waive any conflict related to such Other Development-Related Matters and Additional Matters and agrees not to disqualify ATTORNEYS from participating in any such engagements; provided, however, that in no event will ATTORNEYS, on behalf of any such client, bring any court action against the CITY in connection with the Matter.

Subject to ATTORNEYS' ethical and professional obligations, in the event that ATTORNEYS determine at any time that ATTORNEYS' representation of CITY in connection with the Matter involves a conflict of interest with other clients of this firm which ATTORNEYS believe should not continue, CITY agrees that ATTORNEYS may under those circumstances withdraw from this engagement. If during the course of ATTORNEYS' representation ATTORNEYS identify any such conflict, whether arising during settlement discussions or as a matter of litigation strategy, ATTORNEYS shall bring it to CITY's attention and endeavor to resolve it prior to withdrawal. In the event that CITY identifies any such conflict, ATTORNEYS expect that CITY shall bring it to ATTORNEYS' attention so that the matter may be addressed as appropriate

10. This Agreement may be immediately terminated by CITY at will upon giving written notice. Unless specifically agreed, ATTORNEYS shall not provide any further services and advance no further costs after receipt of the notice. ATTORNEYS will immediately execute and return to CITY the appropriate form to withdraw from the case. Upon termination of this Agreement either by notice or by the completion of the Agreement and the services provided hereunder, all files, documents and other property relating to the Matter and services provided to the CITY shall become CITY's property and shall be returned. CITY's property includes, for example, correspondence, agreements, deposition transcripts, exhibits, expert's reports, legal documents, physical evidence and other items reasonably necessary to CITY's representation, whether or not CITY has paid for them.

11. All notices and requests for authorization or approval under this Agreement shall be directed to RICHARD E. ARCHIBALD, Assistant City Attorney, or his designee.

12. This is an integrated Agreement. This Agreement contains the entire agreement between the parties. This Agreement shall be binding on the heirs, successors, and assigns of the parties.

13. In any action to enforce the terms of this Agreement, the prevailing party shall recover its reasonable attorneys' fees.

DATED: 9/27/05
CITY OF SACRAMENTO, a
municipal corporation

DATED: 9/27/2005

By Richard E. Archibald
Richard E. Archibald
Assistant City Attorney

By Alicia Guerra
Alicia Guerra
Partner

ATTACHMENT A

FEE SCHEDULE

Morrison & Foerster LLP

2005 billing rates

Senior Partner	\$525
Partner	\$465
Associate	\$225 - 400
Legal Assistant	\$155 - 185