

# **ADDENDUM**

**TO RESPONSE TO  
REQUEST FOR PROPOSALS - LEGAL SERVICES  
ISSUED BY THE  
CITY OF STOUGHTON, WISCONSIN  
APRIL 2009**

**Prepared by:**

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18 May 2009

**VIA HAND-DELIVERY &  
E-MAIL [lsullivan@ci.stoughton.wi.us](mailto:lsullivan@ci.stoughton.wi.us)**

City of Stoughton  
Attn: Laurie Sullivan  
Finance Director  
381 East Main Street  
Stoughton, WI 53589

Re: Addendum to Proposal In Response to Request for Proposals – Legal Services

To: City of Stoughton, Wisconsin  
From: Murphy Desmond S.C.

Dear Ms. Sullivan:

Enclosed please find Murphy Desmond S.C.'s ("Murphy Desmond") Addendum to its proposal to serve as municipal counsel to the City of Stoughton, which responds to, and answers the questions set forth in, Mayor Griffin's letter dated May 11, 2009 and Addendum to the City's Request for Proposals – Legal Services. Murphy Desmond hopes the enclosed Addendum is helpful, and looks forward to further demonstrating its qualifications to serve as municipal counsel. Should you, Mayor Griffin or the Common Counsel have any questions, or require any further information, please do not hesitate to contact me. Thank you again for this opportunity and your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen C. Werner, Jr.", written over a faint circular stamp or watermark.

Stephen C. Werner, Jr.

SCW:jlh  
080155  
Sullivan lt2  
Encl.

## I. INTRODUCTION

This document is Murphy Desmond S.C.'s Addendum to its original response to provide legal services to the City of Stoughton, Wisconsin ("City") submitted in response to the Request for Proposals – Legal Services issued by the City dated April 2009 ("RFP"), which responds to the additional questions raised by the City in its Addendum to the RFP.

Murphy Desmond's Addendum sets forth in detail the following information requested by the City: (a) Murphy Desmond's annual proposed fees and costs during each year of the term of the contract; (b) the process by which Murphy Desmond will handle existing and future conflicts of interest; (c) Murphy Desmond's plans for transition of legal work; and (d) an example form contract Murphy Desmond uses with its municipal clients.

*Please feel free to contact us if you have any questions or require further information to assist in the City's selection of legal counsel.*

## II. PROPOSED BILLING ARRANGEMENT AND SCOPE OF SERVICES

### *Combination of Retainer Fee and Hourly Rate*

Based upon the most recent information provided to Murphy Desmond, the City intends to award a forty two (42) month contract for legal services that will commence on July 1, 2009 and terminate on December 31, 2012, and compensate the law firm awarded this contract on either a flat fee basis or a combination of a monthly retainer and hourly fee basis.

While Murphy Desmond originally proposed two (2) compensation alternatives in its original proposal, we hereby amend that original proposal as the City requests and propose to provide legal services to the City in return for compensation based upon a combination of an annual retainer and an hourly rate basis. This proposal is more specifically set forth below. While we believe our proposal to be competitive, fair and reasonable, virtually any term proposed herein may be subject to further clarification or negotiation.

- Annual Retainer Fee Amount

Murphy Desmond proposes that the City pay the following annual compensation to Murphy Desmond in the form of a fixed annual retainer during the term of the contract:

<b>Time Period</b>	<b>Monthly Installment Amounts</b>	<b>Annual Compensation</b>
July 1 - December 31, 2009	\$7,500.00	\$45,000.00 (annualized \$90,000.00)
January 1 - December 31, 2010	\$7,500.00	\$90,000.00
January 1 – December 31, 2011	\$7,725.00	\$92,700.00
January 1 – December 31, 2012	\$7,950.00	\$95,400.00

The above annual retainer amounts shall be payable in monthly installments for General Legal Services (as defined below), which includes municipal court prosecution services. The annual retainer amounts shall not increase during the term of the contract except as shown above.

- Hourly Rate

In addition to the fixed annual retainer, Murphy Desmond also proposes that the City shall pay Murphy Desmond on an hourly basis for services not covered by the retainer arrangement (e.g., those services that fall outside the scope of General Legal Services as defined below) in the following manner and at the following rates.

Statements for legal services for work outside the scope of General Legal Services will be the product of the hours worked multiplied by the hourly rates for the attorneys who did

the work. Our schedule of hourly rates for attorneys and other members of the professional staff is generally based on years of experience, specialization in training and practice, and level of professional attainment. For any civil litigation other than as described in the General Legal Services or services clearly outside the scope of General Legal Services, the following hourly rates shall apply:

Matthew J. Fleming	\$210
Sara Eagle-Kjome	\$200
William E. Morgan	\$210
Lawrence E. Bechler	\$250
Jonathan P. Bruni	\$220
Warren P. Kraft	\$250

The above rates will remain the same from July 1, 2009 through December 31, 2010. These rates shall increase on January 1, 2011 and on January 1, 2012 by the annual amount of Five Dollars (\$5.00) per hour for each attorney. No other Murphy Desmond attorney shall be billed at a rate higher than Mr. Bechler's and Mr. Kraft's rate without the express written consent of the City.

- Costs

As a courtesy, and as part of our proposed hourly rate, Murphy Desmond **will not charge** the City for routine and internally generated photocopies, telephone calls, facsimiles, standard postage or mileage, except in unusual circumstances with the consent of the City. However, we will charge the City for actual overnight or other courier expenses or externally generated photocopy expenses incurred.

- Scope of General Legal Services

For purposes of this Proposal "General Legal Services" shall include and consist of preparing for and attending regular Common Council meetings, drafting legal opinions, reviewing and drafting municipal ordinances (except recodifications), legal research projects unrelated to special matters, collection matters, reviewing real estate matters, rendering of oral advice on all legal questions presented to Murphy Desmond by the City, and municipal court prosecutions.

- Services Outside Scope of General Legal Services

For purposes of this Proposal services clearly outside the scope of General Legal Services shall consist of civil litigation, matters properly charged to special funds, including services to City utilities, City tax incremental districts, special assessment projects, appeals from municipal court decisions, issuance of municipal bonds and industrial development revenue bonds, services for community development authorities and similar separate funds and entities. Murphy Desmond shall also charge on an hourly basis for any reviews of development proposals by persons or firms seeking City review. Typically, the City would then recover these costs from the developer whose project caused the need for those services. Such projects include, but are not limited to, land development projects (including subdivisions, condominium developments and planned unit development projects). The City shall pay Murphy Desmond monthly for all such services rendered, and shall be responsible for obtaining reimbursement of such costs from said developers.

- Reimbursement of Retainer

The retainer amounts set forth above assume approximately 650 hours of General Legal Services and municipal court prosecution services provided by Murphy Desmond annually during the term of our engagement by the City. However, if, as of January 1 each year the total number of hours worked by Murphy Desmond are *less than 600 hours*, Murphy Desmond shall reimburse the City in an amount equal to the difference between the actual hours worked and 600 hours multiplied by the then current average hourly rate calculated by dividing the City's annual retainer by 650 hours. Should the total hours worked by Murphy Desmond exceed 700 hours, the City shall pay Murphy Desmond for each hour worked *in excess of 700 hours* at the then current average hourly rate. All such additional payments or reimbursements shall be paid by January 31 of the following year. For 2009 or if the attorney-client relationship should be terminated mid-year, time shall be prorated and reimbursements or additional payments shall be calculated accordingly.

### **III. CONFLICTS OF INTEREST**

The City has requested that Murphy Desmond state how it intends to handle any existing and future conflicts of interest involving the City. To the best of our knowledge, no current conflicts of interest exist between a current Murphy Desmond client and the City. With respect to possible future conflicts of interest situations, once under contract with the City, Murphy Desmond has no intention of representing any new or potential clients in any matter where the City is an adverse party. By refusing to take on any such representation, any such conflict of interest situation will be avoided. If a future conflict of interest arises between the City and an existing Murphy Desmond client, our intention is to represent the City and obtain a conflict waiver from the firm's existing client. If such a waiver cannot be obtained, Murphy Desmond will work with the City to facilitate the retention of special counsel to represent the City's interest if necessary. Notwithstanding the foregoing, Murphy Desmond believes the likelihood of any such conflict of interest situations arising is minimal.

### **IV. PLANS FOR TRANSITION OF LEGAL WORK**

If Murphy Desmond is awarded the contract by the City to serve as legal counsel, Murphy Desmond intends to take steps to ensure a smooth transition of legal work. By example, Murphy Desmond will begin by working with the City and its current legal counsel to identify all ongoing matters to determine the status of each, focusing particularly on matters needing immediate attention (e.g., ongoing negotiations, completing work before the expiration of applicable deadlines, transitioning litigation matters, etc.), and becoming familiar with the details and circumstances of these matters. Murphy Desmond will also meet with the Mayor, City department heads, police chief, municipal judge, and other City officials and staff the City feels are appropriate to better further familiarize ourselves with current and upcoming matters, as well as current administrative issues, policies, processes and preferences. We will also determine with the City the protocol for assigning matters to Murphy Desmond and the primary contacts for matters in order to ensure orderly processing and timely response. With this understanding of the City's matters, issues, policies, processes and preferences, we will begin providing services.

## V. SAMPLE FORM CONTRACT

The City has requested that Murphy Desmond provide a sample form contract that is typically used with our municipal clients. Please see the attached sample form contract.

## VI. CONCLUSION

We hope the City of Stoughton will agree that Murphy Desmond exemplifies the qualities the City is looking for in hiring general counsel. The best evidence that Murphy Desmond will prove to be a valuable, trusted and responsive advisor and advocate for the City of Stoughton, is our longstanding relationships with our existing municipal clients. Most of our municipal client relationships exceed ten (10) years. Even though officers and employees have changed over the years, we have been able to maintain a high level of trust and client satisfaction in the eyes of those who continue to choose Murphy Desmond to provide legal services to their communities. We look forward to the honor of serving the City of Stoughton.

## AGREEMENT

**THIS AGREEMENT**, is made and effective as of July 1, 2009, by and between the City of Stoughton, a municipal corporation located in the County of Dane, State of Wisconsin (hereinafter the "City"), and Murphy Desmond S.C., a Wisconsin service corporation (hereinafter the "Attorney").

### WITNESSETH:

**WHEREAS**, the City issued a Request for Proposals – Legal Services dated April 2009 ("RFP"), inviting various attorneys and law firms to submit a proposal to provide legal services for the City;

**WHEREAS**, Attorney provided a response to the City's RFP on or around April, 2009 ("Response"), which Response was accepted by the City; and

**WHEREAS**, the City wishes to enter into this Agreement with Attorney to engage Attorney to provide legal services to the City in accordance with the provisions set forth in this Agreement, and Attorney desires to provide such legal services to the City accordingly;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Nature of Agreement.** The City engages, retains, employs and appoints Attorney, pursuant to the authority conferred under and by the City's municipal code, to act, under the title of the City Attorney, as attorney for the City and to render to City and its authorized officers all legal advice, and to represent City and its authorized officers in all matters that may be pending or that may hereafter be instituted in any of the courts of the State of Wisconsin, the courts of the United States located within the State of Wisconsin and before all administrative agencies and departments of the government brought by or against the City, other than representing the City's interest in municipal ordinance violation prosecutions, during and throughout the continuance of this Agreement; and to review all real estate matters, prepare and/or review all contracts, undertake all collections as requested, to render legal opinions, to draft and/or review ordinances and to undertake all other legal services as City or any of its authorized officers may request or require.

2. **Acceptance of Employment.** Attorney accepts the obligation to perform the services set forth in this Agreement, and promises and will render to the best of Attorney's ability the services described in and during the continuance of this Agreement.

3. **Compensation of Attorney.** City will compensate Attorney based upon a combination of an annual retainer and an hourly rate basis.

(a) **Retainer.** City will pay Attorney the annual fixed retainer amounts set forth below

<b>Time Period</b>	<b>Monthly Installment Amounts</b>	<b>Annual Compensation</b>
July 1 - December 31, 2009	\$7,500.00	\$45,000.00 (annualized \$90,000.00)
January 1 - December 31, 2010	\$7,500.00	\$90,000.00
January 1 – December 31, 2011	\$7,725.00	\$92,700.00
January 1 – December 31, 2012	\$7,950.00	\$95,400.00

The above annual retainer amounts shall be payable in monthly installments for “general municipal legal services” (as defined below), which includes municipal court prosecution services. The annual retainer amounts shall not increase during the term of the contract except as shown above. For purposes of this Proposal “general municipal legal services” shall include and consist of preparing and attending regular Common Council meetings, drafting legal opinions, reviewing and drafting municipal ordinances (except recodifications), legal research projects unrelated to special matters, collection matters, reviewing real estate matters, rendering of oral advice on all legal questions presented to Attorney by the City, and municipal court prosecutions.

The annual fixed retainer amounts assume approximately 650 hours of work by Attorney. If, as of January 1 each year the total number of hours worked by Attorney are *less than 600 hours*, Attorney shall reimburse the City in an amount equal to the difference between the actual hours worked and 600 hours multiplied by the then current average hourly rate calculated by dividing the City’s annual retainer by 650 hours. Should the total hours worked by Attorney exceed 700

hours, the City shall pay Attorney for each hour worked *in excess of 700 hours* at the then current average hourly rate. All such additional payments or reimbursements shall be paid by January 31 of the following year. For 2009 or if the attorney-client relationship should be terminated mid-year, time shall be prorated and reimbursements or additional payments shall be calculated accordingly.

- (b) **Hourly Rate Outside of Retainer Amount.** City shall pay Attorney on the basis of Attorney's applicable hourly rate for all hours worked by Attorney on the following matters ("Hourly Services"): civil litigation, matters properly charged to special funds, including services to City utilities, for City tax incremental districts, special assessment projects, reviewing and preparing contracts; attending to real estate sales and acquisitions, complex legal research, appeals from Municipal Court decisions, issuance of municipal bonds and industrial development revenue bonds, services for community development authorities and similar matters. Attorney shall also charge on an hourly basis for any reviews of development proposals by persons or firms seeking City review. Such projects include, but are not limited to, land development projects (including subdivisions, condominium developments and planned unit development projects), telecommunication franchise and lease reviews. The City shall pay Attorney monthly for services rendered reviewing development projects, and shall be responsible for obtaining reimbursement of such costs from said developers.

Statements for legal services for work outside the scope of Hourly Services will be the product of the hours worked multiplied by the hourly rates for the attorneys who did the work. For Hourly Services the following hourly rates shall apply:

Matthew J. Fleming	\$210
Sara Eagle-Kjome	\$200
William E. Morgan	\$210
Lawrence E. Bechler	\$250
Jonathan P. Bruni	\$220
Warren P. Kraft	\$250

The above rates will remain the same from July 1, 2009 through December 31, 2010. These rates shall increase on January 1, 2011 and on January 1, 2012 by the annual amount of Five Dollars (\$5.00) per hour for each respective attorney. No other attorneys within Attorney shall be billed at a rate higher than Mr. Bechler's and Mr. Kraft's rate without the express written consent of the City.

- (c) **Costs and Expenses.** Attorney shall not bill the City for its internally generated photocopies, telephone calls, facsimiles, standard postage or mileage, except in unusual circumstances with the consent of the City. Attorney will bill the City for actual overnight or other carrier expenses and externally generated photocopies, and other unusual expenses agreed to by the parties.

(d) **Monthly Statements.** Attorney shall provide City with itemized monthly statements relating to its services under Section 3 of this Agreement. As to the general municipal services, such statements shall be for informational purposes only. Except as otherwise provided in this Agreement, City shall not be entitled to any refund for services rendered under Section 3, nor shall Attorney be entitled to additional compensation for the year in question. As to the Hourly Services rendered under Section 3, City shall pay for the services rendered on such itemized statements within 30 days of receipt of such itemized statements.

4. **Staffing.** Matthew J. Fleming will have primary responsibility for representation of the City. He may, however, utilize other attorneys, paralegals and legal assistants within the firm in the best exercise of his professional judgment.

5. **Other Legal Counsel.** To the extent that the City wishes to retain other special counsel in matters in which the Attorney is unable to render the services requested because of an ethical conflict of interest or because Attorney does not possess the appropriate experience in a particular area of law, the City reserves the right to retain special counsel and shall notify the Attorney prior to retaining such special counsel.

6. **Designated Contact.** The City Administrator shall be the City's primary contact with Attorney, unless otherwise instructed by the City Administrator. The City Administrator shall consent before Attorney opens any new matters compensable under Section 3 hereof.

7. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing, signed by authorized representatives of each party.

8. **Assignment of Rights.** The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation or other entity without the express prior written consent of the other party.

9. **Term and Termination.** The term of this Agreement shall commence upon the effective date and shall expire on December 31, 2012. Notwithstanding the above, the City may terminate this Agreement at any time with or without cause upon 30 days' prior written notice to Attorney. Upon expiration of this Agreement, the parties agree to negotiate in good faith regarding the terms of any further extensions of this Agreement.

10. **Governing Law** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Wisconsin.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

[SIGNATURE PAGE FOLLOWS]

**MURPHY DESMOND S.C.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

33 East Main Street, Suite 500  
P.O. Box 2038  
Madison, WI 53701-2038

**CITY OF STOUGHTON**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

381 E. Main Street  
Stoughton, WI 53589

ATTEST:

\_\_\_\_\_  
Laurie Sullivan, Finance Director/  
Treasurer