

TOWN OF WELLESLEY



MASSACHUSETTS

BOARD OF SELECTMEN

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TOWN OF WELLESLEY REQUEST FOR PROPOSALS FOR TOWN COUNSEL SERVICES

I. Objective

The Town of Wellesley, Massachusetts, acting through its Board of Selectmen, seeks to appoint a highly qualified attorney or law firm as Town Counsel effective July 1, 2014. The successful appointee should meet or exceed the qualifications stated herein and, in general, should be readily accessible to authorized public officials, exceptionally experienced in municipal law, as further described below, scrupulous in adhering to required standards of professional conduct and ethics, and committed to rendering sound legal advice with suitable objectivity and professional detachment.

II. Background

The Town of Wellesley is located 12 miles west of Boston and has a population of approximately 28,000 residents. The town is predominantly residential with some vibrant commercial areas. The Town approved a budget of \$135 million for Fiscal Year 2014 and maintains a AAA Standard and Poor credit rating. Although there have been no override ballot questions since 2007, the Town has routinely approved them in the past. The Town's last debt exclusion question in 2008 was for a new high school, estimated at the time to cost \$130,000,000.

Town government functions under a Board of Selectmen and Executive Director of General Government Services and has a representative Town Meeting. The Town Clerk, Town Moderator, Board of Assessors, and Planning Board, among several other boards, are elected, while there are numerous other appointed boards, including the Zoning Board of Appeals and Advisory Committee. Town government is decentralized and municipal services are managed through a group of professionally trained department heads and rendered by dedicated employees. The Town's decision-making process is highly collaborative and consensus driven. The Town takes great advantage

of, and is fortunate for, the willingness of citizens with advanced knowledge and experience in many professional and technical fields to contribute to the community on volunteer boards, committees and task forces. Applicants are encouraged to learn more about the Town of Wellesley through its municipal website (www.wellesleyma.gov) and local publications.

The Town of Wellesley has been exceptionally well served by its current Town Counsel, Albert S. Robinson, of the law firm of Grindle, Robinson LLC in Wellesley. Mr. Robinson will be retiring in June 2014 after 37 years as Town Counsel. Mr. Robinson is highly regarded for both his legal advice and wise counsel that he has rendered to board members and staff alike over the course of his tenure.

Staff and board members routinely contact Mr. Robinson directly. He has adroitly handled multiple requests for legal counsel, while striking the delicate balance between responsiveness and accountability. The Town's Executive Director is generally informed of requests for legal advice.

The current model for legal services has worked well in the Town. Mr. Robinson's services have been augmented by labor counsel (Morgan, Brown & Joy), employee benefits counsel (Feeley & Brown, LLC), special education appeals counsel and other counsel for specific matters, such as telecommunications issues and certain appellate Tax Board cases. The Town would like to replicate the model of a "generalist" as Town Counsel with specialists to round out the legal advice rendered to the Town. The Town, at this time, is not seeking to replace any of these specialist legal services. A copy of the Town bylaw, Article 25, on Town Counsel is found in Attachment E.

III. Town Counsel Services

The Town seeks expertise in the following matters:

- General Municipal Law;
- Municipal Finance;
- Town bylaws and regulations;
- Open Meeting, public record, executive session, and conflicts of interest law;
- Zoning and land use issues;
- Real estate issues: acquisitions, sales, eminent domain, easements, leases, tax takings;
- Town Meeting: drafting and review of warrant articles and motions, advice on issues before and at Town Meeting;
- Drafting and monitoring special legislation;
- Bidding, public construction, and municipal procurement issues;
- Affordable Housing;
- Subdivision control law;
- Community Preservation Act;
- Wetlands regulations;
- Oil and Hazardous Waste Contamination and other environmental issues;

- Elections law and procedures;
- Liquor Licensing; and
- Representation of the Town in all courts, including appellate level, and administrative agencies.

The Town expects Town Counsel attendance at the following:

- All sessions of Special and Annual Town Meetings (Annual Town Meeting starts at the end of March and is held on Monday and Tuesday evenings);
- Board of Selectmen meetings generally held weekly on Monday evenings from September through June and occasionally during July and August.

IV. Minimum Qualifications

A. Bar Admissions

The appointee and all those who serve as back-up to the appointee (see below) must be a member in good standing of the Massachusetts Bar and of the Federal Bar for the District of Massachusetts. Town Counsel must have Professional Liability Insurance in the amount of at least \$2,000,000 and will need to produce a certificate of insurance upon appointment.

B. Experience

The appointee must represent or have represented as town counsel (or functional equivalent) a minimum of two Massachusetts municipalities for no less than five years each, or represented other Massachusetts municipalities in specific areas of municipal law, or possess equivalent experience. References for all municipalities currently represented or represented in the past ten years by the appointee must be furnished.

C. Accessibility and Accountability

The appointee must commit to be available for frequent contact either through in person meetings or via telephone, responding to all communications from authorized officials either himself/herself or through a qualified back up within 24 hours of the call. The appointee must be accessible to Town staff and Board members without first seeking approval from the Board of Selectmen or Executive Director of General Government Services. The appointee must also commit, as a general rule, to responding to requests for written opinions within one week unless the circumstances of the opinion warrant a shorter or longer time frame for a response. The appointee must commit to preparing a brief written summary each month of all open issues at no cost to the Town and to preparing a report for the Town's Annual Report.

D. Back-up

The appointee must have within his or her firm or through an established "of counsel" relationship at least one other qualified attorney available to render advice and otherwise represent the interests of the Town of Wellesley when the

appointee is unavailable. In this context, “qualified attorney” shall mean another lawyer who substantially meets the minimum qualifications set forth herein for the appointee or who is supervised by another attorney in the firm that meets these qualifications.

E. Billing

The appointee must commit to providing a summary of legal services rendered and invoices for services ordered, rendered and accepted on a monthly basis. Each statement, if based on an hourly rate for services, must disclose, at a minimum, the date of the service, the identity of the lawyer or staff person performing the service, the subject matter reference for the service, a description of the service performed, the time it took to perform that function, and the hourly rate for the individual performing the function. Expense items must also be itemized.

Currently, Town Counsel is paid a fixed fee for attendance at Board of Selectmen meetings, all sessions of Special and Annual Town Meetings, Moderator meetings in advance of Town Meetings, and the review of all contracts submitted for approval as to form and revisions, or negotiation of revisions, as necessary to achieve approval status.

V. Fees and Expenses

The Town is committed to containing legal costs and wishes to understand the basis on which the responding attorneys propose fees and expenses. The Board of Selectmen will consider alternatives to the traditional hourly rate fee arrangement with counsel and/or the current fixed fee arrangement for certain services as described above. Responding attorneys are required to clearly outline the various types of financial arrangements being proposed. For example, if a fixed fee arrangement is being proposed, define exactly what is meant by this term. If a minimum annual contract, define what would be included in such an arrangement. Responding attorneys should feel free to be creative in this regard so long as the proposal is workable and reasonable.

Whether or not an alternative fee arrangement is proposed by the responding attorney, the attached fees and expenses response sheet must be filled out completely.

VI. Selection

In seeking Town Counsel, the Town of Wellesley is not bound by M.G.L. c.30B or by any other constraints apart from the sound judgment of its members. This process is being used to communicate the desired qualifications of Town Counsel and to solicit information in an orderly fashion for rough comparative purposes.

An eight member Search Committee composed of two Selectmen, Town staff and others has been established whose function will be to recommend two or three finalists

for consideration by the Board of Selectmen. Personal interviews will be part of the process for selecting the finalists. The finalists will interview with the Board of Selectmen during an open meeting. Ultimately, the Board of Selectmen will select the candidate deemed to be in the best interests of the Town, in its sole discretion. Consequently, the Board of Selectmen and Town of Wellesley reserve the right to waive any irregularities in the RFP process and to accept or reject any or all proposals. It is anticipated that the process will conclude by January 31, 2014. The appointment of Town Counsel is made by the Board of Selectmen for each fiscal year. The Board intends to work with the new appointee on a transitional plan.

Below are the projected dates for this process. The Town reserves the right to modify this schedule as it determines convenient:

September 2, 2013	RFP issued
October 1, 2013	Proposals due by 3:00 pm
Mid-October to end of November 2013	Search Committee screening and interview process
December 2013 and January 2014	Board of Selectmen interviews of finalists
January 31, 2014	Board of Selectmen's decision
July 1, 2014	Effective date of appointment

VII. Application

Qualified attorneys or law firms interested in responding to this RFP should fill out the attached forms completely and attach copies of all documents requested therein. Kindly return the same in a sealed envelope labeled "Town Counsel RFP" to Kathleen Nagle, Town Clerk and a member of the Search Committee, who also will be available to respond to questions at:

Kathleen Nagle, Town Clerk
 Town of Wellesley
 525 Washington Street
 Wellesley, MA 02482
 781-431-1019 ext 2250
 knagle@wellesleyma.gov

Please provide eight (8) hard copies of the RFP response and all associated documentation on 8 ½ by 11 paper, along with one digital copy in Adobe pdf format at the address above.

All responses to this RFP must be received at the above address no later than 3:00 pm on Tuesday, October 1, 2013.

ATTACHMENT A

**RESPONSE TO REQUEST FOR PROPOSALS FOR TOWN OF WELLESLEY
COUNSEL**

Name:	
BBO#	
Name of Firm:	
Street Address:	
City, State, Zip:	
Telephone:	
Fax Number:	
Email:	
Website:	

Please respond to each of the following, using separate pages as necessary:

1. Please identify by name (and BBO #, address and phone number if different than above) the proposed Town Counsel, and, if applicable, lead counsel as well as members of a team, and each proposed back-up counsel.
2. Please attach resumes or *curriculum vitae* for each attorney identified above.
3. Do each of the attorneys identified above meet the minimum bar admission requirements of the RFP? If other than “yes”, please explain.
4. With respect to each attorney identified, please list each and every Massachusetts municipality represented by the attorney within the past ten years, the years of such representation, and the name, address and phone number of at least one contact person in each municipality with knowledge of the attorney’s representation.
5. Please describe each identified attorney’s experience in municipal law.
6. Please describe how you propose to satisfy the Accessibility and Accountability requirements of the RFP, specifically with regard to Wellesley’s decentralized form of government.

7. Please describe how you propose to satisfy the back-up requirements of the RFP.
8. If services are to be provided by a team of lawyers, describe how the team approach would work. For example, will specific attorneys be assigned to specific cases or subject matters. Will the specific attorney remain the contact throughout the case or matter?
9. How would you conduct or oversee litigation, including administrative proceedings, in which the Town and its boards are involved in their official capacity, to the extent such legal services are not provided by the Town's insurance carriers or outside counsel?
10. Are you available to review and approve as to form and content all contracts to which the Town is a party?
11. Do you provide regular updates on regulations, legislation and court decisions affecting municipalities and, if so, would this be a separate expense?
12. Do you provide training in legal obligations and compliance for elected, appointed and compensated town employees on issues such as conflict of interest, ethics, open meeting law and harassment, and, if so, would this be a separate expense?
13. Please describe your suggestions for the transition from current town counsel.
14. Please describe any complaints with the Board of Bar Overseers or suits against each identified attorney and how the complaints or suits have been resolved.
15. Please identify any past or current clients that may give rise to a conflict of interest as a result of representing the Town of Wellesley.
16. For each Town you and, if applicable, members of your firm have represented, please list those cases where municipal litigation has been undertaken (do not list special ed or appellate tax board cases).

By my signature, I certify that the information contained in this Response to Request for Proposals are complete and accurate, to the best of my knowledge and belief.

Signed: _____ Date: _____

ATTACHMENT B

RESPONSE TO REQUEST FOR PROPOSALS FOR TOWN OF WELLESLEY TOWN COUNSEL - FINANCIAL INFORMATION

Fees and Expenses Response Sheet

(To be attached to and made a part of the overall Response to Request for Proposals)

1. Please list the name and hourly rate for proposed Town Counsel and for each attorney intended or likely to serve as back-up.
2. If you propose to bill for services provided by paralegals, clerical staff, or other non-attorney personnel, please list by title and by hourly rate each position for whom you may bill.
3. Please provide a complete listing of all charges for expenses you intend to impose as incurred (i.e., any and all copy charges, telephone charges, fax charges, mileage charges and the like, but excluding any fees for stenographers, court fees, service fees and the like).
4. In what hourly increments do you intend to bill?
5. Do you bill out attorney time out of the office on a portal-to-portal basis or some other basis? Please describe.
6. Please describe any proposed alternative fee arrangement.

ATTACHMENT C

MUNICIPAL LAW EXPERIENCE CHECKLIST (To be completed for each team member)

Rate your experience in the following areas of municipal law using the scale below

1. No experience
2. Limited experience
3. Moderate experience
4. Advanced experience
5. Extensive experience

- _____ General Municipal Law
- _____ Municipal Finance
- _____ Town bylaws and regulations
- _____ Open Meeting, public record, executive session, and conflicts of interest law
- _____ Zoning G. L. c. 40A and land use
- _____ Real estate issues: acquisitions, sales, eminent domain, easements, leases, tax taking
- _____ Town Meeting: drafting and review of warrant articles and motions, advice on issues before and at Town Meeting
- _____ Drafting and monitoring special legislation
- _____ Public Bidding, Construction Law and Municipal Procurement Law
- _____ Chapter 40B Affordable Housing
- _____ Subdivision Control Law
- _____ Community Preservation Act G. L. c. 44B
- _____ Wetlands Regulation (State and Local)
- _____ Oil & Hazardous Waste Contamination G. L. c. 21E
- _____ Elections Law
- _____ Liquor Licensing
- _____ Municipal Labor Law
- _____ Chapter 32B

ATTACHMENT D

STATEMENT OF LITIGATION EXPERIENCE (To be completed for each team member)

Rate your experience practicing with the following Courts, Boards and Commissions based on the scale listed below.

1. No experience
2. Limited experience
3. Moderate experience
4. Advanced experience
5. Extensive experience

_____ Trials before State Courts (District, Superior, Land Courts)
_____ Trials before Federal District Courts
_____ Appeals before Massachusetts Appeals Court
_____ Appeals before Massachusetts Supreme Judicial Court
_____ Administrative Proceedings before Massachusetts Civil Service
Commission
_____ Arbitration Proceedings
_____ Mediation Proceedings
_____ Administrative Proceedings before Massachusetts Appellate Tax Board
_____ Administrative Proceedings before Massachusetts Department of
Environmental Protection
_____ Administrative Proceedings before the ABCC
_____ Administrative Proceedings before the Housing Appeals Committee
_____ Administrative Proceedings before Division of Administrative Law Appeals

ATTACHMENT E

TOWN OF WELLESLEY BY-LAWS ARTICLE 25. TOWN COUNSEL

25.1. Office and Qualifications. The Town shall have a Town Counsel who shall be an attorney admitted to practice in the Commonwealth. Town Counsel need not be a resident of the Town or maintain a law office in the Town.

25.2. Term. The Town Counsel shall be appointed annually by the Selectmen for a yearly term to commence on July 1. The Selectmen shall have the power to remove Town Counsel whenever in their judgment the interests of the Town so require. In case of a vacancy in the office, the Selectmen shall fill the same by a new appointment.

25.3. Responsibility. Town Counsel shall be responsible for the performance of all legal services to the Town.

25.4. Duties. It shall be the duty of Town Counsel:

- a. to examine, or cause to be examined, all titles to property in which the Town may be interested;
- b. to draw, supervise the drawing, or review all deeds, obligations, contracts, bonds, leases, conveyances, agreements and other legal instruments, of whatever nature, which may be required by any bylaw, vote or action of the Town, or by any board or official, or to which the Town or its agent may be a party, and which by law, usage or agreement the Town is obligated to draw;
- c. to draw, or supervise and approve, all votes for the laying out, discontinuance, change or improvement of streets or ways, for the taking of lands for any municipal purpose whatever, for the assessment of betterments, and all other forms of assessment;
- d. to commence and prosecute all actions and other legal proceedings and suits by or on behalf of the Town or any board or official, upon vote duly taken by such board or written direction of such official and after the Selectmen have been notified of and approved such vote; except that approval by the Selectmen shall not be required if Town Counsel deems the situation to be of an emergency nature or in those instances when such board or official is vested by statute with the authority to commence and prosecute legal proceedings;
- e. to defend all actions and suits brought against the Town in any Court or other tribunal in this Commonwealth or elsewhere;

- f. to appear as counsel, when directed by the Selectmen, in any other action, suit, or prosecution which may involve the rights and interests of the Town;
- g. to defend all persons elected or appointed to any board and all officers and officials of the Town in suits or prosecutions against them for any official action, or for the performance of any official duty, when any right, privilege, act or direction of the Town may be brought into question;
- h. to defend, subject to the approval of the Selectmen, all employees of the Town in suits or prosecutions against such employees for acts within the scope of their authority as agents of the Town, unless such suits or prosecutions are brought by the Town or on its behalf;
- i. to appear as Counsel before the Legislature of the Commonwealth or any committee thereof, whenever the Selectmen determine that the interests or welfare of the Town may be directly or indirectly concerned, or when requested to do so by a vote of the Town;
- j. to consult with, advise or attend meetings of any board, officer or official, either upon the request of the Chairman thereof or the officer or official involved, or when in the Selectmen's opinion any matter before such board, officer or official has significant legal implications to the Town, and in either instance to furnish a legal opinion upon any subject respecting the official duties of the board, officer or official;
- k. to prepare, when requested, any article for the Warrant for any Town Meeting and to review all articles and motions for form and legal sufficiency;
- l. to make a monthly report to the Selectmen on all actions taken during the preceding month and to other Town boards, officers and officials on legal matters which occurred during the preceding month and specifically relate to such board, officer or official; and
- m. to make an annual report of the work done during the preceding year and the status of all business and litigation pending at the close of that year.

25.5. Special Counsel. Unless expressly authorized by statute, a vote of Town Meeting, or vote of Selectmen, no board, officer or official of the Town shall engage, whether or not for remuneration, any attorney, other than Town Counsel, with regard to its or his official duties, or any Town business, or the business of any of the departments thereof. The Selectmen may, whenever they deem necessary, employ special counsel to assist or act in place of Town Counsel.