

**AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF
MANHATTAN BEACH AND JOAN STEIN JENKINS FOR LEGAL SERVICES**

This Agreement is made and entered into on July 5, 2017, by and between the City of Manhattan Beach, hereinafter referred to as "City", and Joan Stein Jenkins, an individual, hereinafter referred to as "Jenkins."

RECITALS

WHEREAS, Jenkins is an attorney duly licensed under the laws of the State of California and experienced in providing code enforcement services;

WHEREAS, City entered into a contract in 1997 under which Jenkins has prosecuted municipal code violations; and

WHEREAS, the parties want to increase Jenkins' compensation consistent with cost-of-living increases.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Description of Work.**

A. Jenkins shall be the primary attorney prosecuting Municipal Code violations, act as Special Counsel, and perform such services as are requested by the City Attorney, City Manager or their designees. She is hereby authorized to perform all services as are necessary to fulfill their assignments, including, but limited to, initiating criminal and/or civil investigations, obtaining warrants, filing criminal actions, civil actions, administrative proceedings and/or other legal proceedings to enforce City's municipal code and to undertake all necessary and appropriate actions related thereto (collectively, the "Services"). Jenkins, as authorized by the City Attorney or City Manager, or their designees, shall appear in court, conduct investigations and discovery and utilize all available procedures and seek all available remedies. Jenkins, upon City's request, shall provide consultation services to City, the City Attorney and City Manager and their designees. Jenkins shall have access to and may review all City records necessary to perform the Services, including police or other City reports. Jenkins shall review and consider requests by City's staff for criminal or civil prosecution; initiation of other actions or proceedings; obtain warrants and court orders; make determinations on whether to file complaints; prepare and serve complaints and legal documents; represent City at court hearings, administrative hearings and other proceedings; perform necessary legal research and investigation; interview witnesses; and undertake such other and further tasks as are necessary to fulfill their obligations under this Agreement. Jenkins is authorized upon request of the City Attorney or City Manager or their designees to provide consulting services with regard to the Manhattan Beach Municipal Code, including amendment thereto and advising department directors and law enforcement personnel.

B. Jenkins shall use her independent judgment in determining whether to recommend the initiation of criminal prosecution to City, which judgment shall be in accordance with all applicable law and the highest ethical requirements of a prosecuting attorney.

2. Data Furnished Jenkins. All information, data, reports, records and maps in the possession of City and necessary for carrying out the Services shall be furnished to Jenkins without charge by City; and City shall cooperate in every reasonable way in the carrying out of the work without delay.

3. Term. This Agreement shall be effective as of July 1, 2017 and shall be and remain in full force and effect unless terminated pursuant to Section 7 herein.

4. Personnel.

A. Jenkins represents that she will perform the Services required under this Agreement. On occasion, she may utilize other persons to perform Services. Such personnel shall not be employees of, or have any contractual relationship with City.

B. All the Services required hereunder will be performed by attorneys, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

C. Jenkins shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Jenkins' personnel practices. City shall have the right to offset against the amount of any fees due to Jenkins under this Agreement any amount due to City from Jenkins as a result of Jenkins' failure to promptly pay to City any reimbursement or indemnification arising under this Section.

5. City Representative. Jenkins shall work closely and cooperate fully with City and its designated representatives. The designated representative shall be the City Attorney or his authorized designee.

6. Compensation and Reimbursement for Costs.

A. City shall pay for Services satisfactorily performed, within 30 days following receipt from Jenkins and approval by City of original invoices as follows:

- \$125.00 an hour for Services performed during the period of July 1, 2017 – June 30, 2019.
- \$130.00 an hour for Services performed during the period of July 1, 2019 – June 30, 2021.
- \$135.00 an hour for Services performed after June 30, 2023.

B. City shall reimburse Jenkins for the following costs:

- Service charges, as incurred, for service of arraignment notices and subpoenas, procurement of documents from courts and other entities, document certification fees, and for other customary services.

- Any court reporter fees, as incurred, for the procurement of a transcript of a court proceeding.
- Any fees or charges, as incurred, to prepare, duplicate or enlarge exhibits for any proceeding.
- \$15.00 for each use of commercial database providers (including Infotek, Dataquick or Courthouse Data) for investigational or background purposes in a matter. This charge is exclusive of any attorney time in reviewing this information (to be billed hourly), or other charges to Jenkins by the information providers (which shall also be billed to City).
- Copier charges – 20 cents a page.
- Faxes – 25 cents a page.
- Postage – As incurred.
- Any extraordinary costs with prior City approval.

7. Termination. The City Council may terminate this Agreement at any time without cause by giving 30 days' written notice to Jenkins of such termination and specifying the effective date thereof. In this event, all finished or unfinished documents and other materials shall, at the option of City, become its property. If this Agreement is terminated by City as provided in this Section, Jenkins will be paid for all services rendered by Jenkins prior to the date of termination. Jenkins may terminate this Agreement at any time without cause by giving 90 days' written notice to City of such termination and specifying the effective date thereof.

8. Transfer of Files. In the event of termination, City and Jenkins shall cooperate in the orderly transfer of pending matters and cases to another attorney as designated by City.

9. Contract Changes. No change in the character, extent, or duration of the Services shall be made except upon approval by the City Council and execution of an amendment to this Agreement in writing between City and Jenkins. The amendment shall set forth the changes of work, the extensions of time and the adjustments of the fee to be paid by City to Jenkins, if any.

10. Insurance. Jenkins shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or physical damage to property which may arise from or in connection with the performance of the work by Jenkins. Additionally, Jenkins shall procure and maintain for the duration of the Agreement, professional liability insurance. Insurance shall be of the type, in the amounts, and subject to, the provisions described below.

A. Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a minimum limit of \$1,000,000 per occurrence combined single limit.

B. Professional liability insurance of at least \$1,000,000 per claim and \$2,000,000 in the aggregate. Such insurance may be subject to reasonable terms, limitations and

conditions and a self-insured retention or deductible to be borne entirely by Jenkins. Jenkins shall maintain professional liability insurance or tail coverage, as appropriate, to meet the obligations of this paragraph for a period of four years after the termination of this Agreement.

C. Evidence of Coverage.

1) Within 14 days after approval of this Agreement by City, Jenkins shall file with the City Clerk certificates of insurance with original endorsements evidencing coverage in compliance with this Agreement.

2) Jenkins shall make the insurance policies required by this Agreement, including all endorsements and riders, available to City for inspection at Jenkins's office during regular business hours.

3) During the term of this Agreement, Jenkins shall maintain with City current valid proof of insurance coverage. Proof of renewals shall be filed prior to expiration of any required coverage.

4) Failure to submit any required evidence of insurance within the required time period shall be cause for termination.

5) In the event Jenkins does not maintain current, valid, evidence of insurance on file with City, then City, may, at its option, defer payment of any moneys owed to Jenkins, or which are subsequently owed to Jenkins, until proper proof is filed.

6) All insurance coverage shall be provided by insurers satisfactory to City and with a rating of B+;VII or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.

7) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days' prior written notice provided to City. Upon prior request of the carrier, the notice period may be reduced to ten days in the event of non-payment of premium.

8) Jenkins's insurance and any insurance provided in compliance with this Agreement shall be primary with respect to any insurance or self-insurance programs covering City, the City Council, and any officer, agent or employee of City.

9) Where available, the insurer shall agree to waive all rights of subrogation against City, and every officer, agent, and employee of City.

10) Any deductibles or self-insured retentions shall be declared to and are subject to approval by City.

11) In the event that Jenkins does not provide continuous comprehensive general liability insurance coverage, City shall have the right, but not the obligation, to obtain the required insurance coverage at Jenkins's expense, and City may deduct

all such costs from moneys City owes to Jenkins or from moneys which it subsequently owes to Jenkins.

12) All commercial general liability insurance coverage required to be maintained pursuant to this Agreement by Jenkins shall name City, the City Council, and every officer, agent, and employee of City as additional insureds with respect to work under this Agreement.

11. Independent Contractor. Jenkins shall be an independent contractor and shall not incur, nor have the power to incur any debt, obligation or liability whatever for or against City.

12. Conflicts of Interest.

A. Jenkins shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving matters upon which Jenkins is providing services under this Agreement. Jenkins shall not reveal confidential or secret information of City except with the consent of City or as otherwise required by law.

B. Jenkins shall notify City of any known conflict of interest related to matters upon which Jenkins is providing services under this Agreement. In the event that such conflict is not or cannot be waived, Jenkins shall assist and cooperate with separate services provided by outside legal counsel retained by City on the matter for which the conflict arose.

13. Compliance with State Law. Jenkins shall comply with all state, and local laws and ordinances applicable to the work and shall perform the work in a manner that accords with the highest level of professional care, and ethical responsibility as required by applicable professional standards and rules of conduct.

14. Findings Confidential. All of the reports, information, data, or other documents prepared or assembled by Jenkins under this Agreement are confidential; and Jenkins agrees that they shall not be made available to any individual or organization without the prior written approval of City or as otherwise required by law.

15. Copyright. No report or other document produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of Jenkins, and all such documents may be used in any manner by City without providing additional compensation to Jenkins.

16. Assignability. Jenkins shall not assign any interest in this Agreement, and shall not transfer any interest in the same without the prior written consent of City. Claims for money due or to become due to Jenkins from City under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to City.

17. Notice. Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the following addresses:

Joan Stein Jenkins
1217 8th Street
Manhattan Beach, CA 90266

City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

18. Indemnification.

A. Jenkins shall defend, indemnify, and hold City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of City officials (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Jenkins, its employees, or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Jenkins shall defend Indemnitees, at Jenkins' own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Jenkins shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Jenkins' obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Jenkins, City, its directors, officials, officers, employees, agents or volunteers.

B. Notwithstanding the provisions of Paragraph A. above, City acknowledges that City will defend and indemnify Jenkins from claims arising out of Jenkins' role as code enforcement attorney and special counsel for City, except for claims arising from Jenkins' negligence or intentional misconduct, and from and against all and any claims, actions and liabilities arising from the Services performed within the scope of their duties under this Agreement.

C. The provisions of this Section shall survive the termination of this Agreement.

19. Files.

A. Jenkins shall maintain one or more client files (the "Client Files") in connection with providing services in accordance with this Agreement. In such Client Files, Jenkins may place correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to its representation of City. The Client Files shall be and remain the property of City. Jenkins shall control the physical location of such legal files during the term of this Agreement. Jenkins may also place in such Client Files

documents containing Jenkins' attorney work product, mental impressions or notes ("Work Product"). The Work Product shall be and remain Jenkins' property. Notwithstanding that Work Product shall be Jenkins' property, upon request by City, Jenkins shall provide City with copies of any and all Work Product prepared in connection with services performed pursuant to this Agreement. In addition, electronic documents such as e-mail and documents prepared on Jenkins' word processing system, but which have not been printed in hard copy, shall be and remain Jenkins' property and shall not be considered part of the Client Files, but copies of any such documents or emails prepared in connection with services to City shall be provided to City upon request. Jenkins may enact and implement reasonable retention policies for such electronic documents, and Jenkins has discretion to delete such documents.

B. At the conclusion of this Agreement, the original Client Files for City (but not including the Work Product) shall be made available to City; and City shall have the right to take possession of its Client Files. Jenkins will be entitled to make copies of the Client Files, and City will be entitled to make copies of the Work Product for City. At the conclusion of this Agreement (whether or not City takes possession of the Client Files), City shall take possession of any and all original contracts, certificates, and similar documents that may be in the Client Files; and Jenkins shall have no further responsibility with regard to such documents.

C. If City does not take possession of the Client Files at the conclusion of the Agreement, Jenkins shall store such Client Files for a period of at least one year. During the entire time that Jenkins stores the Client Files, City shall have the right to take possession of its files at any time. At the conclusion of such one-year period, Jenkins may send to City a notice, advising of Jenkins' intention to dispose of the Client Files. City shall have 60 days from the date of such notice to take possession of the Client Files. If City does not take possession of the Client Files during that time, then City agrees that Jenkins may dispose of the Client Files without further notice. Jenkins shall have no obligation to abide by City's document retention schedule or to take any steps except as outlined above or upon written direction from City.

20. Extent of Agreement. This Agreement represents the entire and integrated Agreement between City and Jenkins and supersedes any and all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the party affected by the amendment.

21. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

22. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California.

23. Recitals. The Recitals set forth above are made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first hereinabove written.

City:

City of Manhattan Beach,
a California municipal corporation

JOAN STEIN JENKINS

By: _____
Name: _____
Title: _____



ATTEST:

By: _____
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

By:  _____
for Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO CONTENT:

By: _____
Name: Bruce Moe
Title: Finance Director