

**AGREEMENT BETWEEN THE CITY OF MANHATTAN
BEACH AND RICHARDS, WATSON & GERSHON, A
PROFESSIONAL CORPORATION, FOR CITY ATTORNEY
SERVICES**

THIS AGREEMENT is entered into between the City of Manhattan Beach, a municipal corporation ("City"), and the law firm of Richards, Watson & Gershon, a professional corporation ("RWG").

WHEREAS, the City wishes to retain RWG to discharge the duties of the office of City Attorney and to designate a member of RWG as City Attorney of the City; and

WHEREAS, RWG wishes to discharge the duties of the office of City Attorney;

NOW THEREFORE, the parties agree as follows:

Section 1. Legal Services. RWG shall provide the following services to the City:

A. General City Attorney Services. RWG shall discharge the duties of the office of the City Attorney of City and use its best efforts to provide such services in a professional, thorough, timely and competent manner. Roxanne Diaz shall serve as City Attorney for the City. Larry Wiener shall serve as Senior Counsel to the City and RWG shall use other attorneys as appropriate to serve the City's legal services needs. RWG shall provide to the City all legal services of the type generally provided by a City Attorney's office ("General Services"). General Services shall include, but not be limited to:

1. Provide legal assistance to the City Council, the City Manager, and staff;
2. Attend City Council and upon request by the City Manager or his/her designee, commission and committee meetings;
3. Attend Staff meetings at the request of the City Manager or the City Manager's designee;
4. Apprise the City of changes in the law that may affect the City;

5. Prepare legal opinions, resolutions, and ordinances;
6. Monitor the handling of litigation and special services by outside legal counsel and prepare a regular status report to the City Council on all pending liability cases;
7. Unless governed by subsection B, below, prepare all legal opinions and written memoranda as needed or requested by the City Manger and/or his/her designee and prepare and/or review all agreements, leases, public works contracts and other documents as needed or requested by the City Manager or his/her designee;
8. Render advice and assistance in the administration of the City's general liability risk management and insurance programs;
9. Provide conflict of interest advice to the City Council and staff;
10. Provide AB 1234, Brown Act, Conflict of Interest, California Public Records Act and other training to Council Members, commissioners and staff, as requested by the City Manager or his/her designee; and
11. Any service of any nature rendered by Roxanne Diaz and/or Larry Wiener.

B. Additional Services. In addition to the General Services provided pursuant to subsection A, RWG shall provide the following additional services (collectively, "Additional Services"):

1. Civil litigation, as assigned by the City, in which the City has been named in a pleading initiating litigation against the City or RWG has filed a pleading on behalf of the City including, without limitation, "Pitchess Motions," as well as any non-judicial adversarial proceedings such as arbitrations and administrative law proceedings and hearings when a pleading or equivalent document has been filed in which the City is a named party ("Litigation Special Services");

2. Employment and Labor Law services, as assigned by the City, including, without limitation, workers' compensation legal services ("Employment Law Special Services");

3. Environmental law services, as assigned by the City, involving hazardous waste issues, the Clean Water Act, the Clean Air Act and similar environmental statutes ("Environmental Special Services"). CEQA advisory services shall be considered General Services and not Environmental Special Services. For purposes of this Agreement "CEQA advisory services" shall mean all services rendered by RWG concerning CEQA not involving Litigation Special Services;

4. Real estate legal services, as assigned by the City ("Real Estate Special Services");

5. Legal services, as assigned by the City, relating to development applications where the developer is reimbursing the City for such services ("Developer Reimbursed Services");

6. Bond counsel, disclosure counsel, issuer's counsel and similar services ("Bond Counsel Services"), as assigned by the City; and

7. Projects not otherwise specified in this subsection B where the City Attorney and the City Manager agree prior to RWG's rendition of services pertinent to the project that the project will take more than twenty five (25) total hours of attorney time to complete ("Major Projects"). In the event that a project which the City Attorney and City Manager agree will take more than twenty five (25) total hours to complete takes less than twenty five (25) hours to complete, then the services rendered by RWG with respect to that project shall be included in General Services.

C. Litigation Special Services shall be provided by members of RWG's litigation department. Employment Law Special Services shall be provided by members of RWG's employment law department. Environmental Special Services shall be provided by members of RWG's environmental law department. Real Estate Special Services shall be provided by members of the RWG's real estate department and Bond Counsel Services shall be

provided by members of RWG's public finance department. Legal services provided by Roxanne Diaz and Larry Wiener in the areas specified in this Subsection C shall be considered General Services, shall not be considered Additional Services and shall not be included in the ten (10) hours of Employment Law, Environmental or Real Estate Special Services which are part of General Services as specified in Exhibit A.

D. RWG must first obtain the City Manager's approval to commence the provision of Additional Services with respect to a matter, project, assignment or case which is reasonably likely to result in RWG incurring more than seven thousand five hundred dollars (\$7,500.00) in fees pursuant to this section 1(B).

E. Notwithstanding anything to the contrary stated above, the City reserves the right to retain separate, outside counsel to perform any Additional Service.

F. Commencing six (6) months after the effective date, and semi-annually thereafter, RWG shall deliver to the City a written report outlining, in summary fashion, the matters, projects, assignments and cases ("matters") with respect to which RWG has provided Additional Services, which said report shall include a description of the nature of said matters handled by RWG during the previous six (6) month period, the status of same and the total fees and costs incurred by RWG in providing the Additional Services with respect to each such matter.

Section 2. Consideration.

A. Consideration. For General Services as described in subsection A of Section 1, RWG shall be paid a flat rate of \$19,500 per month.

For Additional Services as described in subsection B of Section 1, RWG shall be compensated as provided in Exhibit A.

B. Expenses. RWG shall be reimbursed for actual expenses reasonably incurred in the performance of legal services under this Agreement for long distance telephone calls, court costs, legal research services, service of process, messengers, deliveries, postage, and other similar expenses incidental to the performance of this Agreement. RWG shall not be

reimbursed for word processing and document preparation costs. RWG shall be reimbursed no more than one dollar (\$1.00) per page for facsimiles, with a maximum charge of Twenty-Five Dollars (\$25.00) for any individual facsimile transmission, and no more than five cents (05¢) per page for photocopies; provided that City shall not be charged for facsimile or copying charges in connection with the provision of General Services pursuant to section 1(A) of this Agreement. Mileage, other than routine travel to and from City Hall, will be billed at the standard rate established by the IRS for deducting the operating expenses of an automobile used for business purposes. RWG shall not separately bill nor be paid for attorneys' or other RWG personnel's time spent in traveling to and from City Hall, nor shall RWG separately bill or be paid for Roxanne Diaz's and/or Larry Wiener's time spent in traveling. For all other time RWG's attorneys' or personnel spend in traveling, RWG shall bill and be paid no more than \$250 per hour.

C. Billing. RWG shall send a monthly invoice for services rendered during the previous month and for expenses incurred on the City's account. The monthly invoice shall describe the nature of the work performed, the attorney performing the work and the time spent for each task as well as the nature of any reimbursable expenses incurred. Travel time shall be separately stated and identified in all of RWG's monthly invoices to the City. This level of detail shall be provided in each monthly invoice for both General Services and Additional Services. Upon the request of and as directed by the City Manager or his/her designee, RWG shall generate separate invoices pertaining to specific accounts, matters and/or departments. The City shall process and cause such invoices to be paid promptly, typically within thirty (30) days of receipt.

D. Review of Billings. Jointly, the parties shall periodically review the invoices submitted by RWG to insure that the financial arrangement set forth herein is to the mutual benefit of the parties and is otherwise in the public interest. RWG agrees that it shall not seek to increase the rates, charges or fees set forth herein for at least one calendar year following the effective date of this Agreement.

Section 3. Term. The term of this Agreement shall commence on September 6, 2011 ("effective date") and shall continue until terminated as provided in this Agreement.

Section 4. Indemnification. RWG shall indemnify, defend, and hold harmless the City, and its officers, agents, and employees, from any and all claims, injuries, liabilities of any sort, damages, fees (including costs of defense), expenses or losses resulting or arising from the wrongful or negligent action or inaction of RWG or any person employed by RWG in the performance of this Agreement.

Section 5. Insurance. RWG 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 RWG, its agents, representatives, or employees. Additionally, RWG 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 one million dollars per occurrence combined single limit.

B. Workers' compensation insurance of at least one million dollars per claim.

C. Professional liability insurance of at least five million dollars per claim and ten million dollars 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 RWG which shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) per claim. RWG 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.

D. Evidence of Coverage:

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

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

3. During the term of this Agreement, RWG shall maintain with the 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 RWG does not maintain current, valid, evidence of insurance on file with the City, then the City, may, at its option, defer payment of any moneys owed to RWG, or which are subsequently owed to RWG, until proper proof is filed.

6. All insurance coverage shall be provided by insurers satisfactory to the 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 the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

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

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

10. Any deductibles or self-insured retentions shall be declared to and are subject to approval by the City. Provided, however, that RWG's professional liability insurance may be subject to a self-insured retention or deductible to be borne entirely by RWG which shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence.

11. In the event that RWG does not provide continuous comprehensive general liability insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at RWG's expense, and the City may deduct all such costs from moneys the City owes to RWG or from moneys which it subsequently owes to RWG.

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

Section 6. Successors and Assigns. This Agreement may not be assigned by RWG.

Section 7. Facilities and Equipment. RWG shall, at its own cost and expense, provide all facilities and equipment at its offices which may be required for the performance of services required by this Agreement. With the consent of the City, RWG shall also provide at its own expense facilities and equipment in the City Attorney's Office at City Hall to allow RWG attorneys to access the full resources of the law firm.

Section 8. Termination. This Agreement may be terminated by the City, with or without cause, upon thirty (30) days written notice. RWG shall be entitled to the compensation earned by it prior to the date of termination.

RWG may terminate this Agreement with the consent of the City or if RWG reasonably believes that it cannot provide services consistent with its professional and ethical obligations; provided, however, that in those matters in which RWG is providing Litigation Special Services and the City declines to consent to RWG's withdrawal from such matters, then RWG may withdraw from providing such services only upon order of the court or other tribunal controlling the proceedings in question. In such instance, RWG shall provide the City with reasonable notice in order to allow the City to arrange alternative representation.

Section 9. Files. RWG shall maintain one or more client files (the "Client Files") in connection with providing services in accordance with this Agreement. In such Client Files, RWG may place correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to its representation of the City. The

Client Files shall be and remain the property of the City. RWG shall control the physical location of such legal files during the term of this Agreement. RWG may also place in such Client Files documents containing RWG's attorney work product, mental impressions or notes ("Work Product"). The Work Product shall be and remain RWG's property. Notwithstanding that Work Product shall be RWG's property, upon request by the City; RWG shall provide the 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 RWG's word processing system, but which have not been printed in hard copy, shall be and remain RWG's 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 the City shall be provided to the City upon request. RWG may enact and implement reasonable retention policies for such electronic documents and RWG has discretion to delete such documents.

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

If the City does not take possession of the Client Files at the conclusion of the Agreement, RWG shall store such Client Files for a period of at least one (1) year. During the entire time that RWG stores the Client Files, the City shall have the right to take possession of its files at any time. At the conclusion of such one (1) year period, RWG may send to the City a notice, advising of RWG's intention to dispose of the Client Files. The City shall have sixty (60) days from the date of such notice to take possession of the Client Files. If the City does not take possession of the Client Files during that time, then the City agrees that RWG may dispose of the Client Files without further notice. RWG shall have no obligation to abide by the City's document retention schedule or to take any steps except as outlined above or upon written direction from the City.

Section 10. Notice. Whenever it shall be necessary for any party to serve notice on another party respecting this Agreement, such notice shall be served personally, by overnight mail, or by certified mail, return receipt requested, addressed to City at: City Manager of the City of Manhattan Beach, 1400 Highland Avenue, Manhattan Beach, CA 90266; and addressed to RWG at: Roxanne M. Diaz, Richards, Watson & Gershon, 355 S. Grand Ave. 40th Floor, Los Angeles, CA 90071 unless and until a different addresses may be furnished in writing by either party to the other, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

Section 11. Extent of Agreement. This Agreement represents the entire and integrated Agreement between the City and RWG 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.

Section 12. 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.

Section 13. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California.

Section 14. Independent Contractor. No employment relationship is created by this Agreement. RWG shall be an independent contractor of City and except as provided herein, shall exercise control over the manner in which it provides the services rendered hereunder. Other than the consideration expressly provided for herein, RWG shall not be entitled to any compensation or benefits, including but not limited to retirement, medical and/or paid leave, for the services RWG renders hereunder.

Section 15. Conflicts of Interest. RWG shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving matters upon with RWG is providing services under this Agreement. RWG shall not reveal confidential or

secret information of the City except with the consent of the City or as otherwise required by law.

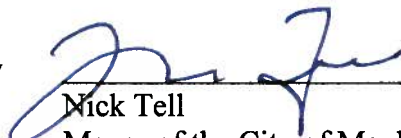
RWG shall notify City of any known conflict of interest related to matters upon which RWG is providing services under this Agreement. In the event that such conflict is not or cannot be waived, RWG shall assist and cooperate with separate services provided by outside legal counsel retained by the City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

Section 16. Performance Review. Within six (6) months of the effective date, and thereafter annually, the City Council shall conduct an evaluation of the performance of RWG's delivery of legal services and performance under this Agreement.

Executed this 6th day of September, 2011, at Manhattan Beach, California.


CITY OF MANHATTAN BEACH
A Municipal Corporation

By



Nick Tell
Mayor of the City of Manhattan Beach,
California

ATTEST:

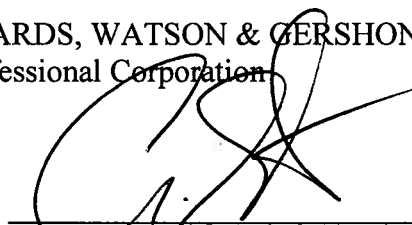


Liza Tamura, City Clerk

9-11-11 (SEAL)

RICHARDS, WATSON & GERSHON
A Professional Corporation

By:



Craig A. Steele
Vice President

EXHIBIT A

Compensation for Additional Services

RWG shall be compensated at the following rates for Additional Services provided pursuant to section 1, subsection B of this Agreement. All time shall be billed in one tenth hour increments.

A. *Litigation Special Services.* RWG shall provide Litigation Special Services at a discount of ten percent from RWG's standard rates with a cap of \$350 per hour, except that RWG will provide Litigation Special Services for Pitchess Motions at the rate of \$195 per hour.

B. *Employment Law Special Services.* RWG shall provide up to ten hours of Employment Law Special Services each month as part of its General Services. Additional Employment Law Special Services shall be provided at the rate of \$195 per hour.

C. *Environmental Special Services.* RWG shall provide up to ten hours of Environmental Special Services each month as part of its General Services. Additional Environmental Special Services shall be provided at the rate of \$225 per hour.

D. *Real Estate Special Services.* RWG shall provide up to ten hours of Real Estate Special Services each month as part of its General Services. Additional Real Estate Special Services shall be provided at the rate of \$225 per hour.

E. *Developer Reimbursed Services.* RWG shall provide Developer Reimbursed Services at a discount of ten percent from RWG's standard rates with a cap of \$350 per hour.

F. *Bond Counsel Services.* Fees for Bond Counsel services would be based on the size of the issuance and as agreed to by RWG and the City prior to the issuance of debt at a rate customary for the industry.

G. *Major Projects.* RWG shall provide legal services for Major Projects at the rate of \$195 per hour.

Additional Services provided by paralegals and legal assistants shall be billed at the rate of \$145 per hour.