

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

FIFTH AMENDMENT TO AGREEMENT NO. 33253 FOR LEGAL SERVICES

33253

THIS FIFTH AMENDMENT TO AGREEMENT FOR LEGAL SERVICES is made and entered, in duplicate, as of September 1, 2018, pursuant to a minute order adopted by the City Council of the City of Long Beach on *October 2, 2018*, by and between SHUTE, MIHALY & WEINBERGER LLP hereinafter referred to as "Special Counsel," and the CITY OF LONG BEACH, a municipal corporation, hereinafter referred to as "City" amending that certain agreement ("Agreement") between Special Counsel and City and identified by the City as Agreement No. 33253.

WHEREAS, an Agreement for Legal Services with Special Counsel was entered into, for reference purposes only, on August 13, 2013, in the amount of \$349,000; and

WHEREAS, a First Amendment to Agreement No. 33253 was entered into as of August 14, 2014, which increased the amount by \$300,000; and

WHEREAS, a Second Amendment to Agreement No. 33253 was entered into as of September 1, 2015, which increased the amount by \$300,000; and

WHEREAS, a Third Amendment to Agreement No. 33253 was entered into as of March 1, 2017, which increased the amount by \$300,000; and

WHEREAS, a Fourth Amendment to Agreement No. 33253 was entered into as of January 1, 2018, which increased the amount by \$200,000; and

WHEREAS, a Fifth Amendment to Agreement No. 33253 for Legal Services is required to increase the amount by \$100,000 in connection with the litigation of Fast Lane Transportation, Inc., et al. v. City of Los Angeles, et al.; BNSF Railway, et al., Real Party In Interest;

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as follows:

Section 3 of said Contract No. 33253 is hereby amended in its entirety to read:

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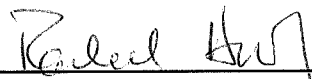
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3. Fee. City shall pay to Special Counsel in due course of payments compensation at the hourly rates identified in the staffing profile and reimbursement of costs as further described herein in the "Guidelines" also attached hereto, not to exceed One Million, Five Hundred Forty-Nine Thousand dollars (\$1,549,000.00).

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

SHUTE, MIHALY & WEINBERGER, LLP

DATED: 9/13/18

By 
Rachel Hooper
"Special Counsel"

Tom Modica
Assistant City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

CITY OF LONG BEACH, a municipal corporation

DATED: 10/4/18

By 
City Manager

The foregoing Fifth Amendment to Agreement No. 33253 for Legal Services is approved as to form this 31st day of October, 2018.

CHARLES PARKIN, City Attorney

By 
MICHAEL MAIS
Assistant City Attorney

GUIDELINES FOR BILLING

In addition to the provisions stated in the Terms and Conditions, the following guidelines for billing apply:

1. The City expects each individual working on the Matter to have the necessary experience to perform the Services required to protect or pursue the City's interests in the Matter in a cost effective manner.

2. The City expects Special Counsel to select the individual most suitable for the task required and the specific needs of the Matter, and to use the maximum efficiencies available. Billings for services performed by the inappropriate level of personnel will be reduced by the City based on rate adjustments for the appropriate level of personnel.

3. The City Attorney or designee may request a written budget and timeline for the Matter. The budget shall include all projected fees and costs to be incurred by Special Counsel for the Matter, commencing on the date that Special Counsel receives the request. The budget and timeline shall include the specific tasks to be performed (including such things as discovery and motions for trial, preparation of documents for transactional services, and anticipated research and investigations). Special Counsel shall identify the projected total hours that will be billed and who will be performing those hours of service, plus fees and costs for each task. The budget and timeline shall be a good faith estimate and as complete as possible. Any deviation from the budget and any deviation over 10% on any task identified in the budget must be discussed in advance with the City Attorney, or designee, and the billing related to that task is subject to adjustment so as to conform to the budget.

In addition, the City Attorney or designee may request a written budget and timeline similar to the one described above, but relating specifically to one or more tasks necessary to the Matter.

If the billings of Special Counsel are approaching the "not to exceed" amount shown in the Purchase Order, then Special Counsel shall submit, in writing to the

1 City Attorney or designee, the reasons why additional funds will be required to complete
2 the Services. Special Counsel is cautioned that the City cannot pay invoices which
3 reflect fees over the "not to exceed" amount in the Purchase Order.

4 4. The City will not pay for unnecessary review of texts, codes, rules of
5 court, or other fundamental references. The City will pay the hourly rate for specific legal
6 research which is unique to the Matter, assuming that Special Counsel has used
7 maximum efficiencies and that Special Counsel has not already performed research in
8 the same or similar areas of law.

9 5. The City acknowledges the benefit of communications between
10 attorneys in the firm. The City does, however, expect that intra-office conferences will
11 only be held as needed, and will be kept to a minimum. Intra-office conferences shall be
12 for the purpose of discussing strategy and legal issues which directly further the Matter.
13 The City will not pay for conferences which are supervisory or instructional (including
14 conferences regarding case management). Any invoice which lists an intra-office
15 conference that exceeds these guidelines must contain a full explanation and is subject
16 to reduction by the City. The City will not pay for "team meetings" and the City will
17 scrutinize all intra-office conferences for "value added" to the Matter by the intra-office
18 conference, for the number of individuals attending the intra-office conference, the length
19 of the conference, the subject(s) discussed at the conference and who participated in it
20 and will, in the City's sole discretion, determine if such value was added.

21 6. The City will not pay for local telephone calls; incoming facsimiles;
22 postage; time spent on filing, calendaring, indexing pleadings, and photocopying;
23 conferences with Clerks of Court or court reporters; proofreading; re-drafting due to
24 substandard work; time billed by summer associates; time for more than one individual at
25 a trial, hearing, court appearance, arbitration, mediation, deposition, third party meeting,
26 conference call or similar event (unless approved in advance by the City); opening,
27 closing or organizing files; or other similar tasks.

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1 7. Vague billing which does not contain sufficient information to allow
2 the City's reviewer of the invoice to determine the nature of the task, the reason for the
3 task and the individual performing the task is subject to reduction by the City. Examples
4 of vague billing include but are not limited to the following: Attention to Matter, Review
5 case and issues, Conference, Review correspondence, Arrangements, Telephone call,
6 Discovery, Trial Preparation, Meeting, Update strategy, Motion work, Work on case or
7 project, Pleadings, Work on file or discovery, Prepare for "xxx", Review documents, Legal
8 Research or analysis.

9 8. All services billed by attorneys and paralegals must be actual legal
10 services requiring the expertise of a legal provider. The City will not pay for more than
11 eight (8) hours of Services per day without a detailed explanation of the need for time
12 over eight hours and may reduce the invoice if the explanation is unsatisfactory, in the
13 City's sole discretion.

14 9. The City will reimburse for facsimiles sent but not received by
15 Special Counsel and photocopies made at a rate not to exceed \$.12 per page; the
16 number of pages of facsimiles and to whom they were sent, and the number of pages or
17 photocopies made must appear on the invoice. Special Counsel shall limit the making of
18 photocopies and the sending of facsimiles. The City will reimburse actual costs for
19 computerized legal research if it is reasonable and necessary; however, these charges
20 are subject to review by the City.

21 10. The City will not reimburse for overtime, word processing (document
22 production), supplies, anything identified on an invoice as "miscellaneous", or any other
23 unidentified charges.

24 11. Special Counsel shall normally use the U.S. Mail and regular
25 attorney services to send and to file papers and other materials. The City reserves the
26 right to reduce excessive charges for messengers and Federal Express or other similar
27 services which are not fully explained or which are not necessary, in the City's
28 determination.

1 12. A. The City will reimburse travel costs of Special Counsel only as
2 described herein. Travel costs not addressed in these Guidelines are not reimbursable.
3 Travel costs must be reasonable. The City will not reimburse for travel by more than one
4 person of Special Counsel, unless approved in writing by the City Attorney or designee in
5 advance of such travel. The City will not reimburse for excess costs caused by an
6 indirect route chose for Special Counsel's personal reasons.

7 B. As used in these Guidelines, "local travel" means travel that is 100
8 miles or less from the office of Special Counsel or from his/her home. "Extended travel"
9 means travel that is more than 100 miles from the office of Special Counsel or from
10 his/her home.

11 C. The City will not reimburse for local travel. However, the City will
12 reimburse for the actual cost of parking that is necessitated by local travel. The City will
13 not reimburse for meals in connection with local travel. While Special Counsel is on local
14 travel, the City will pay fifty percent (50%) of the hourly rate of Special Counsel.

15 D. The City must approve all extended travel in advance. The City will
16 reimburse one hundred percent (100%) of the actual costs of extended travel, unless
17 Special Counsel can substantiate the need for full reimbursement. Special Counsel shall
18 use its best efforts to make airline reservations far enough in advance to take advantage
19 of reduced air fares and shall take advantage of other promotional air fares that reduce
20 costs. In any case, travel by air shall be at economy, coach, or other lower fare. The
21 City will not reimburse for travel insurance.

22 Special Counsel should use a rental car while on extended travel only when
23 necessary and when the cost of a rental car will be less than other forms of ground
24 transportation. If the use of a rental car meets the preceding criteria, then the City will
25 reimburse for a compact vehicle for one person, a mid-sized vehicle for two persons, and
26 a standard size vehicle for three or more persons. The City will not reimburse for luxury
27 vehicles, vans, or 4x4 vehicles.

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The City will reimburse Special Counsel, while on extended travel, for the reasonable, actual costs for meals, excluding the cost of alcoholic beverages, and for lodging at hotels which are moderately priced for the locale, but will not reimburse for laundry or movies.

E. Special Counsel shall submit a travel expense report on the City's form after completing extended travel. Special Counsel shall submit receipts or other evidence of payment relating to each item for which Special Counsel seeks reimbursement.