

# 28728

## NINTH AMENDMENT TO AGREEMENT NO. 28728 FOR LEGAL SERVICES

1 THIS NINTH AMENDMENT TO AGREEMENT NO. 28728 FOR LEGAL  
2 SERVICES is made and entered, in duplicate, as of October 24, 2006, pursuant to a  
3 minute order adopted by the City Council of the City of Long Beach on October 24,  
4 2006, by and between THE LAW OFFICES OF M. BRIAN McMAHON, hereinafter  
5 referred to as "Special Counsel", and the CITY OF LONG BEACH, a municipal  
6 corporation, hereinafter referred to as "City" amending that certain agreement  
7 ("Agreement") between Special Counsel and City and identified by the City as Contract  
8 No. 28728.  
9

10 WHEREAS, an Agreement for Legal Services with the Law Firm of M.  
11 Brian McMahon was entered into, for reference purposes only, on March 1, 2004, in the  
12 amount of \$200,000.00; and

13 WHEREAS, a First Amendment to Agreement for Legal Services was  
14 entered on July 6, 2004, adding \$100,000.00; and

15 WHEREAS, a Second Amendment to Agreement for Legal Services was  
16 entered on September 9, 2004, adding \$300,000.00; and

17 WHEREAS, a Third Amendment to Agreement for Legal Services was  
18 entered on February 8, 2005, adding \$300,000.00; and

19 WHEREAS, a Fourth Amendment to Agreement for Legal Services was  
20 entered on June 30, 2005, adding \$100,000.00; and

21 WHEREAS, a Fifth Amendment to Agreement for Legal Services was  
22 entered on June 15, 2005, adding \$350,000.00; and

23 WHEREAS, a Sixth Amendment to Agreement for Legal Services was  
24 entered on November 15, 2005, adding \$300,000.00; and

25 WHEREAS, a Seventh Amendment to Agreement for Legal Services was  
26 entered on June 20, 2006, adding \$100,000.00; and

27 WHEREAS, an Eighth Amendment to Agreement for Legal Services was  
28 entered on September 12, 2006, adding \$200,000.00; and

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 WHEREAS, a NINTH Amendment to Agreement No. 28728 for Legal Services is  
2 required to increase the amount by \$150,000.00 in connection with the litigation of  
3 Long Beach Oil Development Company vs. City of Long Beach, Case No. CV 03-6655;

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

6 Section 3 of said Contract No. 28728 is hereby amended in its entirety to  
7 read:

8 "3. Fee. City shall pay to Special Counsel in due  
9 course of payments compensation at the hourly rates  
10 identified in the staffing profile and reimbursement of costs  
11 as further described in the 'Guidelines' also attached hereto,  
12 not to exceed Two Million One Hundred Thousand Dollars  
13 (\$2,100,000.00).

14 Sec. 2. Except as provided herein Agreement No. 28728, shall remain  
15 unchanged and in full force and effect.

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

19 LAW OFFICE M. BRIAN McMAHON

20 Dated: 10/24/06

M. Brian McMahon

M. Brian McMahon

21 CITY OF LONG BEACH  
22 a municipal corporation

23 Dated: 11.7.06

24 By [Signature]  
City Manager

25 The foregoing NINTH Amendment to Agreement No. 28728 for Legal  
26 Services approved as to form this 6 day of ~~October~~ <sup>November</sup> 2006.

27 ROBERT E. SHANNON, City Attorney

28 By [Signature]

1  
2 GUIDELINES FOR BILLING  
3

4 In addition to the provisions stated in the Agreement, the following  
5 guidelines for billing apply:

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

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

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

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

1                   If the billings of Special Counsel are approaching the "not to exceed"  
2 amount shown in Section 3 of the Agreement, then Special Counsel shall submit, in  
3 writing to the City Attorney or designee, the reasons why additional funds will be  
4 required to complete the Services. Special Counsel is cautioned that the City cannot  
5 pay invoices which reflect fees over the "not to exceed" amount in Section 3 of the  
6 Agreement.

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

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

25                   6. The City will not pay for local telephone calls; incoming facsimiles;  
26 postage; time spent on filing, calendaring, indexing pleadings, and photocopying;  
27 conferences with Clerks of Court or court reporters; proofreading; re-drafting due to  
28 substandard work; time billed by summer associates; time for more than one individual

1 at a trial, hearing, court appearance, arbitration, mediation, deposition, third party  
2 meeting, conference call or similar event (unless approved in advance by the City);  
3 opening, closing or organizing files; or other similar tasks.

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

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

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

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

27           11. Special Counsel shall normally use the U.S. Mail and regular attorney  
28 services to send and to file papers and other materials. The City reserves the right to

1 reduce excessive charges for messengers and Federal Express or other similar  
2 services which are not fully explained or which are not necessary, in the City's  
3 determination.

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

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

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

18 D. The City must approve all extended travel in advance. The City will  
19 reimburse fifty percent (50%) of the actual costs of extended travel, unless Special  
20 Counsel can substantiate the need for full reimbursement. Special Counsel shall use  
21 its best efforts to make airline reservations far enough in advance to take advantage of  
22 reduced air fares and shall take advantage of other promotional air fares that reduce  
23 costs. In any case, travel by air shall be at economy, coach, or other lower fare. The  
24 City will not reimburse for travel insurance.

25 Special Counsel should use a rental car while on extended travel only  
26 when necessary and when the cost of a rental car will be less than other forms of  
27 ground transportation. If the use of a rental car meets the preceding criteria, then the  
28 City will reimburse for a compact vehicle for one person, a mid-sized vehicle for two

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

1 persons, and a standard size vehicle for three or more persons. The City will not  
2 reimburse for luxury vehicles, vans, or 4x4 vehicles.

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

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

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ADDENDUM**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<u>NAME</u>	<u>POSITION/TITLE</u>	<u>HOURLY RATE</u>
M. BRIAN McMAHON		\$350.00
RANDY R. MERRITT		\$290.00
DEBBIE McMAHON		\$ 35.00
<i>Ryan D. Larsen</i>		<i>\$ 76.50</i>

Robert E. Shannon  
City Attorney of Long Beach  
333 West Ocean Boulevard  
Long Beach, California 90802-4664  
Telephone (562) 570-2200

**APPROVED AS TO FORM**  
*November 6, 2006*  
*Robert E. Shannon*  
**ROBERT E. SHANNON, City Attorney**