

1 2. Staffing Profile. A. Because the City has engaged Special Counsel
2 due to its expertise and reputation, Special Counsel and the City Attorney or designee
3 will agree on a staffing profile that identifies the partners, associates, and paralegals
4 who are authorized to work on the Matter, including their respective billing rates, which
5 is attached as an Addendum to this Agreement. Individuals whose names are not
6 included in the staffing profile may not work on the Matter without the prior approval of
7 the City Attorney, or designee. The City reserves the right to refuse to pay for work
8 performed by any individual whose name is not listed or who has not received prior
9 approval, or whose rate has not been approved.

10 B. Special Counsel shall not hire or otherwise incur any obligation to pay
11 other counsel, specialists, consultants, or experts for services in connection with the
12 Matter without the prior written approval of the City Attorney or designee.

13 3. Fee. City shall pay to Special Counsel in due course of payments
14 compensation at the hourly rates identified in the staffing profile and reimbursement of
15 costs as further described in this Agreement and in the "Guidelines" attached to it, not
16 to exceed One Hundred Fifty Thousand Dollars (\$150,000.00), which includes the sum
17 of \$95,000.00 stated in the Purchase Order.

18 4. Billing. A. Special Counsel shall keep a record of time spent on the
19 matter in increments of one-tenth (.1) of an hour.

20 B. Each task shall be distinctly and completely identified; the City will not
21 pay invoices which contain block billing. The billing entry must contain the name or
22 initials of the individual performing the task, the nature of the task, the date it was
23 performed, and the length of time it took.

24 C. The City will not pay for the use of attorneys and paralegals to perform
25 Services which are secretarial or administrative.

26 D. The City reserves the right to audit all invoices. The City will not pay
27 for costs incurred by Special Counsel in preparing an invoice, correcting it, or
28 resubmitting it.

1 E. Special Counsel shall submit invoices no later than the last day of the
2 month following the month in which Services were performed and actual costs incurred.
3 If Special Counsel submits invoices after that date, then the invoice(s) may be subject
4 to a discount of ten percent (10%) for each month or portion of a month that the invoice
5 is not timely submitted.

6 5. Costs. The City will reimburse Special Counsel for the reasonable
7 costs incurred by Special Counsel as a result of its representation of the City in the
8 Matter, in accordance with the Guidelines. Costs shall be actual, without the addition of
9 administrative or overhead charges, and must be documented. The City will not pay for
10 costs that do not contain supporting documentation satisfactory to the City Attorney, or
11 designee.

12 6. Term. The term of the Purchase Order and, consequently, this
13 Agreement began on March 25, 2003 and shall end when the Matter is concluded or on
14 fifteen (15) days' prior notice from the City to Special Counsel.

15 7. Insurance. As a condition precedent to the effectiveness of this
16 Agreement, Special Counsel shall procure and maintain at its expense for the duration
17 of this Agreement from insurance companies admitted to write insurance in California
18 or from authorized non-admitted insurance companies that have ratings of or equivalent
19 to A:VIII by A.M. Best Company professional liability or errors and omissions liability
20 insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

21 Any self-insurance program, self-insured retention or deductible must be
22 separately approved in writing by the City's Risk Manager or designee and shall protect
23 the City, its officials, employees and agents in the same manner and to the same extent
24 as they would have been protected had the policy or policies not contained retention or
25 deductible provisions. Each insurance policy shall be endorsed to state that coverage
26 shall not be reduced, non-renewed, or canceled except after thirty (30) days prior
27 written notice to the City, and shall be primary and not contributing to any other
28 insurance or self-insurance maintained by the City, its officials and employees. Special

1 Counsel shall notify the City in writing within five (5) days after any insurance has been
2 voided by the insurer or canceled by the insured.

3 Special Counsel shall deliver to the City certificates of insurance and
4 original endorsements for approval as to sufficiency and form prior to the start of
5 performance. The certificate and endorsements for each insurance policy shall contain
6 the original signature of a person authorized by that insurer to bind coverage on its
7 behalf. The procuring or existence of insurance shall not be deemed or construed as a
8 limitation on Special Counsel's liability or as performance of or compliance with any
9 indemnity provisions in this Agreement. City reserves the right to require complete
10 certified copies of all policies at any time. Special Counsel shall make available to the
11 City all books, records, and other information relating to the insurance during normal
12 business hours. Any modification or waiver of the insurance requirements shall only be
13 made with the approval of the City Risk Manager or designee. In addition, Special
14 Counsel shall, at least thirty (30) days prior to expiration of the insurance, furnish to the
15 City certificates of insurance and endorsements evidencing renewal of such insurance.

16 8. Conflict of Interest. Special Counsel, by executing this Agreement,
17 certifies that, at the time Special Counsel executes this Agreement and for the duration
18 of this Agreement, Special Counsel does not have and will not perform services for any
19 other client which would create a conflict as between the interests of the City under this
20 Agreement and the interests of that other client, subject to written waiver by the City.

21 9. Nondiscrimination. In connection with performance of Services and
22 subject to applicable rules and regulations, Special Counsel shall not discriminate on
23 the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV
24 status, handicap, or disability. It is the policy of the City to encourage the participation
25 of Minority Business Enterprises and Women-owned Business Enterprises and the City
26 urges Special Counsel to do likewise.

27 10. Miscellaneous. A. This Agreement shall not be amended, nor any
28 provision or breach of it waived except in writing signed by the parties which refers to

1 this Agreement.

2 B. This Agreement shall be governed by and construed pursuant to the
3 laws of the State of California. Special Counsel shall comply with all laws, ordinances,
4 rules, and regulations covering performance of Services.

5 C. This Agreement, including the Guidelines and exhibits, if any,
6 constitutes the entire understanding between the parties and supersedes all other
7 agreements, oral or written, with respect to the Services and the Matter.

8 D. If there is any inconsistency or ambiguity between this Agreement, the
9 Guidelines, or the Addendum, this Agreement shall control.

10 E. If there is any legal proceeding between the parties to enforce or
11 interpret this Agreement or to protect or establish any rights or remedies hereunder, the
12 prevailing party shall be entitled to its costs, including reasonable attorney's fees and
13 court costs (including appeals).

14 F. The acceptance of Services or payment of money by the City shall not
15 operate as a waiver of any provision of this Agreement. The waiver of any breach of
16 this Agreement shall not constitute a waiver of any other or subsequent breach of this
17 Agreement.

18 G. This Agreement is intended by the parties to benefit themselves only
19 and is not in any way intended or entered for the purpose of creating any benefit or right
20 for any person or entity that is not a party to this Agreement.

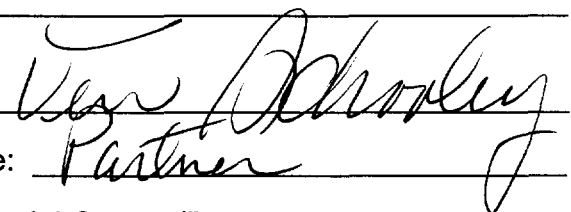
21 11. Notice. Notice shall be in writing and personally delivered or
22 deposited in the U.S. Mail, first class, postage prepaid to Special Counsel at the
23 address first stated above and to the City at 333 West Ocean Boulevard, Long Beach,
24 CA 90802 Attn: City Attorney. Notice may be given by fax to the City Attorney at (562)
25 436-1579 and to Special Counsel at (562) 435-6014, provided that duplicate notice is
26 simultaneously delivered or mailed. Notice shall be deemed given on the date of
27 personal delivery or forty-eight hours after deposit in the mail. Notice of change of
28 address shall be given as described herein for other notices.

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

IN WITNESS WHEREOF, the parties have caused this document to be executed with all formalities required by law as of the date first stated above.

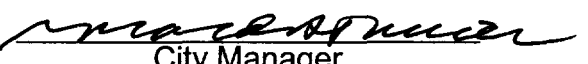
FULWIDER PATTON LLP

Date: Oct 30, 2006

By 
Title: Partner
"Special Counsel"

CITY OF LONG BEACH, a municipal corporation

Date: 11.7., 2006

By 
City Manager
"City"

This Agreement is approved as to form on 11/6, 2006.

ROBERT E. SHANNON, City Attorney

By 
Senior Deputy

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

DFG:kdh:10/23/06
S:\GWIN\FulwiderSpecialCounselAGR.wpd

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>
Vern Schooley	Partner	\$430.00
Michael J. Moffatt	Associate	\$250.00

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

1 GUIDELINES FOR BILLING

2
3 In addition to the provisions stated in the Agreement, the following
4 guidelines for billing apply:

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

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

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

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

28 If the billings of Special Counsel are approaching the "not to exceed"

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

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

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

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

1 meeting, conference call or similar event (unless approved in advance by the City);
2 opening, closing or organizing files; or other similar tasks.

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

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

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

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

26 11. Special Counsel shall normally use the U.S. Mail and regular attorney
27 services to send and to file papers and other materials. The City reserves the right to
28 reduce excessive charges for messengers and Federal Express or other similar

1 services which are not fully explained or which are not necessary, in the City's
2 determination.

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

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

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

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

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

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

1 reimburse for luxury vehicles, vans, or 4x4 vehicles.

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

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

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27 DFG:rmb(1-14-99)
S:\GWIN\SPECIALANDGUIDELINES.WPD

28