

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

1 THIRD AMENDMENT TO AGREEMENT NO. 33893

2 **33893**

3 THIS THIRD AMENDMENT TO AGREEMENT NO. 33893 is made and
4 entered, in duplicate, as of July 11, 2018, for reference purposes only, pursuant to a minute
5 order adopted by the City Council of the City of Long Beach at its meeting on July 10, 2018
6 by and between JARVIS, FAY & GIBSON, f/k/a Jarvis, Fay, Doportto & Gibson ("Special
7 Counsel") and the CITY OF LONG BEACH, a municipal corporation ("City").

8 WHEREAS, City and Special Counsel entered into Agreement No. 33893 on
9 July 1, 2015, whereby Special Counsel agreed to provide Legal Services in connection
10 with the litigation of *Aquino et al. v City of Long Beach, Case No. BC587526*, in an initial
11 not-to-exceed amount of \$15,000; and

12 WHEREAS, a First Amendment to Agreement No. 33893 was entered into
13 on June 8, 2016, to increase the amount by \$185,000 for a total not to exceed amount of
14 \$200,000; and

15 WHEREAS, a Second Amendment to Agreement No. 33893 was entered
16 into on September 6, 2017, to increase the amount by \$100,000 for a total not to exceed
17 amount of \$300,000; and

18 WHEREAS, in order for Special Counsel to continue to represent the City's
19 interest in the *Aquino* matter, it is necessary to increase the amount by \$50,000 for a total
20 not to exceed amount of \$350,000;

21 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
22 conditions herein contained, the parties agree as follows:

23 1. Section 3 of Agreement No. 33893 is hereby amended in its entirety
24 to read:

25 "3. FEE. City shall pay to Special Counsel in due course of payments
26 compensation at the hourly rates identified in the staffing profile and reimbursement of
27 costs as further described herein and in the "Guidelines" also attached hereto, in a total
28 not-to-exceed amount of Three Hundred Fifty Thousand Dollars (\$350,000). Any new "not-

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

1 to-exceed" amount shall be set forth in a written amendment signed by both parties."

2 2. Except as expressly modified herein, all of the terms and conditions
3 contained in Agreement No. 33893 are ratified and confirmed and shall remain in full force
4 and effect.

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


7

8

9

JARVIS, FAY & GIBSON

10 DATED: 7/26/18

By 

11

Title: Partner

12

"Special Counsel"

13

14

CITY OF LONG BEACH, a municipal
corporation

15

16 DATED: 7/30/18

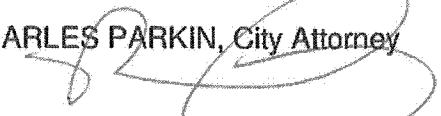
By 
City Manager

17

18

"City"

19 DATED: 7-26-18

CHARLES PARKIN, City Attorney
By 
City Attorney

20

21

22

23

24

25

26

27

28

Tom Modica
Assistant City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

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

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

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

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

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

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

1 7. Vague billing which does not contain sufficient information to allow the
2 City's reviewer of the invoice to determine the nature of the task, the reason for the task
3 and the individual performing the task is subject to reduction by the City. Examples of
4 vague billing include but are not limited to the following: Attention to Matter, Review case
5 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 over
12 eight hours and may reduce the invoice if the explanation is unsatisfactory, in the City's
13 sole discretion.

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

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

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

27 12. TRAVEL

28 A. The City will reimburse travel costs of Special Counsel only as

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

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

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

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

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

27 F. The City will reimburse Special Counsel, while on extended travel, for
28 the reasonable, actual costs for meals, excluding the cost of alcoholic beverages, and for

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

1 lodging at hotels which are moderately priced for the locale, but will not reimburse for
2 laundry or movies.

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

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28