

# 30247

## AGREEMENT FOR LEGAL SERVICES

1  
2 THIS AGREEMENT FOR LEGAL SERVICES is made and entered, in  
3 duplicate, as of August 14, 2007, for reference purposes only, by and between the LAW  
4 FIRM OF KAISER & SWINDELLS ("Special Counsel") and the CITY OF LONG BEACH,  
5 a municipal corporation ("City").

6 WHEREAS, the City Attorney has identified a need for the legal services of  
7 Special Counsel and Special Counsel is willing and able to perform those services; and

8 WHEREAS, the City and Special Counsel must cooperate to deliver quality  
9 legal services in an efficient manner and desire to follow the parameters of this  
10 Agreement toward that end;

11 NOW THEREFORE, in consideration of the mutual terms and conditions  
12 contained herein, the parties agree as follows:

13 1. Scope of Services. Special Counsel shall perform all legal services  
14 necessary and appropriate to the Matter for which Special Counsel has been engaged,  
15 namely: PITCHESS MOTIONS (the "Services" or the "Matter"). The City has engaged  
16 Special Counsel because Special Counsel is uniquely qualified in the area of law  
17 required.

18 2. A. Because the City has engaged Special Counsel due to its  
19 expertise and reputation, Special Counsel and the City Attorney or designee will agree on  
20 a staffing profile that identifies the partners, associates, and paralegals who are  
21 authorized to work on the Matter, including their respective billing rates, which will be  
22 attached as Addendum subsequent to execution of this Agreement. Individuals whose  
23 names are not included in the staffing profile may not work on the Matter without the prior  
24 approval of the City Attorney, or designee. The City reserves the right to refuse to pay for  
25 work performed by any individual whose name is not listed or who has not received such  
26 prior approval, or whose rate has not been approved.

27 B. Special Counsel shall not hire or otherwise incur any  
28 obligation to pay other counsel, specialists, consultants, or experts for services in

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ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

1 connection with the Matter without the prior written approval of the City Attorney or  
2 designee.

3           1.     Fee. City shall pay to Special Counsel in due course of payments  
4 compensation at the hourly rates identified in the staffing profile and reimbursement of  
5 costs as further described herein and in the "Guidelines" also attached hereto, not to  
6 exceed One Hundred Forty Five Thousand Dollars (\$145,000.00).

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

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

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

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

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

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

1           6.     Term. The term of this Agreement shall begin at 12:01 a.m. on  
2 August 14, 2007, and shall end when the Matter is concluded or on fifteen (15) days' prior  
3 notice from the City to Special Counsel.

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

10                     Any self-insurance program, self-insured retention or deductible must  
11 be separately approved in writing by the City's Risk Manager or designee and shall  
12 protect the City, its officials, employees and agents in the same manner and to the same  
13 extent as they would have been protected had the policy or policies not contained  
14 retention or deductible provisions. Each insurance policy shall be endorsed to state that  
15 coverage shall not be reduced, non-renewed, or canceled except after thirty (30) days'  
16 prior written notice to the City, and shall be primary and not contributing to any other  
17 insurance or self-insurance maintained by the City, its officials and employees. Special  
18 Counsel shall notify the City in writing within five (5) days after any insurance required  
19 herein has been voided by the insurer or canceled by the insured.

20                     Special Counsel shall deliver to the City certificates of insurance and  
21 original endorsements for approval as to sufficiency and form prior to the start of  
22 performance hereunder. The certificate and endorsements for each insurance policy  
23 shall contain the original signature of a person authorized by that insurer to bind  
24 coverage on its behalf. The procuring or existence of insurance shall not be deemed or  
25 construed as a limitation on Special Counsel's liability or as performance of or  
26 compliance with any indemnity provisions herein. City reserves the right to require  
27 complete certified copies of all policies at any time. Special Counsel shall make available  
28 to the City all books, records, and other information relating to the insurance required

1 herein during normal business hours. Any modification or waiver of the insurance  
2 requirements herein shall only be made with the approval of the City Risk Manager or  
3 designee. In addition, Special Counsel shall, at least thirty (30) days prior to expiration of  
4 the insurance required hereunder, furnish to the City certificates of insurance and  
5 endorsements evidencing renewal of such insurance.

6           8.     Conflict of Interest. Special Counsel, by executing this Agreement,  
7 certifies that, at the time Special Counsel executes this Agreement and for the duration of  
8 this Agreement, Special Counsel does not have and will not perform services for any  
9 other client which would create a conflict as between the interests of the City hereunder  
10 and the interests of such other client, subject to written waiver by the City.

11           9.     Nondiscrimination. In connection with performance of Services and  
12 subject to applicable rules and regulations, Special Counsel shall not discriminate on the  
13 basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, AIDS  
14 related condition, handicap, disability, or Vietnam Era veteran status. It is the policy of  
15 the City to encourage the participation of Minority Business Enterprises and Women-  
16 owned Business Enterprises and the City urges Special Counsel to do likewise.

17           10.    Miscellaneous. A. This Agreement shall not be amended, nor any  
18 provision or breach hereof waived except in writing signed by the parties which refers to  
19 this Agreement.

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

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

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

28                   E.     If there is any legal proceeding between the parties to enforce

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1 or interpret this Agreement or to protect or establish any rights or remedies hereunder,  
2 the prevailing party shall be entitled to its costs and expenses, including reasonable  
3 attorneys' fees and court costs (including appeals).

4 F. The acceptance of Services or payment of money by the City  
5 shall not operate as a waiver of any provision of this Agreement. The waiver of any  
6 breach of this Agreement shall not constitute a waiver of any other or subsequent breach  
7 of this Agreement.

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

11 11. Notice. Notice shall be in writing and personally delivered or  
12 deposited in the U.S. Mail, first class, postage prepaid to Special Counsel at 444 West  
13 Ocean Blvd., Suite 900, Long Beach, CA 90802-4516, Attn.: Raymond T. Kaiser and to  
14 the City at 333 West Ocean Boulevard, 11th Floor, Long Beach, California 90802, Attn.:  
15 City Attorney. Notice may be given by fax to the City Attorney at (562) 436-1579 and to  
16 Special Counsel at (562) 491-0903, provided that duplicate notice is simultaneously  
17 delivered or mailed. Notice shall be deemed given on the date of personal delivery or  
18 forty-eight hours after deposit in the mail. Notice of change of address shall be given as  
19 described herein for other notices.

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

22  
23 LAW FIRM OF KAISER & SWINDELLS

24 DATED: 8/27/07

By Raymond T. Kaiser

Title: Partner

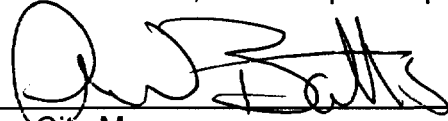
27 "Special Counsel"  
28

CITY OF LONG BEACH, a municipal corporation

DATED:

9/10

By



City Manager

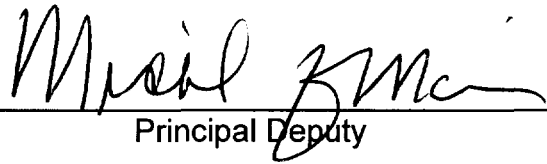
"City"

This Agreement is approved as to form on

SEPT 6, 2007

ROBERT E. SHANNON, City Attorney

By



Principal Deputy

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**GUIDELINES FOR BILLING**

In addition to the provisions stated in the Agreement, 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 Section 3 of the Agreement, then Special Counsel shall submit, in

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

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 cases 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  
8 100 miles or less from the office of Special Counsel or from his/her home. "Extended  
9 travel" means travel that is more than 100 miles from the office of Special Counsel or  
10 from his/her home.

11                   C.    The City will not reimburse for local travel. However, the City  
12 will reimburse for the actual cost of parking that is necessitated by local travel. The City  
13 will not reimburse for meals in connection with local travel. While Special Counsel is on  
14 local 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  
16 City will reimburse fifty percent (50%) 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 fairs 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  
23 only when necessary and when the cost of a rental car will be less than other forms of  
24 ground transportation. If the use of a rental car meets the preceding criteria, then the  
25 City will reimburse for a compact vehicle for one person, a mid-sized vehicle for two  
26 persons, and a standard size vehicle for three or more persons. The City will not  
27 reimburse for luxury 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.

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ADDENDUM

NAME	POSITION/TITLE	HOURLY RATE
RAYMOND T. KAISER	Attorney/Partner	\$135.00
PAMELA A. SWINDELLS	Attorney/Partner	\$135.00
WAYNE D. LOUVIER	Attorney/Associate	\$135.00
ERIC C. DEMLER	Attorney/Associate	\$135.00
ROBERT B. NORUM	Attorney/Associate	\$135.00
KATHY K. YI	Attorney/Associate	\$135.00
JUDY MURPHY	Paralegal	\$ 60.00