

35254

AGREEMENT FOR LEGAL SERVICES

(LITIGATION)

THIS AGREEMENT FOR LEGAL SERVICES is made and entered, in duplicate, pursuant to City Council approval on April 23, 2019, by and between RUTAN & TUCKER ("Special Counsel") and the CITY OF LONG BEACH, a municipal corporation ("City").

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

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

WHEREAS, Purchase Order No. BPLW18000012 was issued for Legal Services with Special Counsel in an initial amount not-to-exceed \$200,000; and

WHEREAS, an Agreement for Legal Services is necessary to increase the amount by \$200,000;

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

1. SCOPE OF SERVICES. Special Counsel shall perform all legal services necessary and appropriate to the Matter for which Special Counsel has been engaged, namely: **Alberto Vargas, Pablo Orduno vs. City of Long Beach; LASC Case No. BC675610** (the "Services" or the "Matter"). The City has engaged Special Counsel because Special Counsel is uniquely qualified in the area of law required.

2. ENGAGEMENT OF OTHER COUNSEL, SPECIALISTS, EXPERTS AND COURT REPORTERS.

A. Because the City has engaged Special Counsel due to its expertise and reputation, Special Counsel and the City Attorney or designee will agree on a staffing profile that identifies the partners, associates, hearing representatives, and paralegals who are authorized to work on the Matter, including

1 their respective billing rates, which will be attached as Addendum subsequent to
2 execution of this Agreement. Individuals whose names are not included in the
3 staffing profile may not work on the Matter without the prior approval of the City
4 Attorney, or designee. The City reserves the right to refuse to pay for work
5 performed by any individual whose name is not listed or who has not received such
6 prior approval, or whose rate has not been approved.

7 B. Special Counsel shall not select, hire or otherwise incur any
8 obligation to pay other counsel, specialists, consultants, or experts for services in
9 connection with the Matter without the prior written approval of the City Attorney or
10 designee. The City reserves the right to refuse to pay for work performed by any
11 individual or firm.

12 C. Special Counsel shall use court reporters from the City
13 Attorney's approved list, and shall bill their services at the City's negotiated rates.

14 D. For workers' compensation matters, Special Counsel shall:

15 i. Obtain prior written approval of the City Attorney or
16 designee, before hiring or otherwise incurring any obligation to pay for any
17 investigations including surveillance.

18 ii. Obtain prior written approval of the City Attorney or
19 designee, before hiring or otherwise incurring any obligation to pay for copy
20 service for obtaining medical records or other subpoenaed records.

21 iii. Submit and resolve all AOE/COE disputes and medical
22 disputes for safety officers in accordance with agreements between the City
23 of Long Beach and the Long Beach Police Officers Association and Long
24 Beach Firefighters Association, which will be attached as Addendum
25 subsequent to execution of this Agreement.

26 iv. Engage only California licensed attorneys or licensed
27 hearing representatives to appear at the Workers Compensation Appeals
28 Board or at any other legal proceeding.

1 3. FEE. City shall pay to Special Counsel in due course of payments
2 compensation at the hourly rates identified in the staffing profile and reimbursement of
3 costs as further described herein and in the "Guidelines" also attached hereto, in an initial
4 not-to-exceed amount of Four Hundred Thousand (\$400,000.00). The "not-to-exceed"
5 amount may be subsequently modified or changed after a written budget has been
6 submitted to, and approved by the City Attorney pursuant to Section 7 of this Agreement.
7 Any new "not-to-exceed" amount shall be set forth in a written amendment signed by both
8 parties.

9 4. 75% CONTRACT AMOUNT NOTICE. The City will not pay Special
10 Counsel for any fees incurred in excess of the total amount allotted to this Agreement,
11 which is set forth as the "not-to-exceed" amount described in Section 3 of this Agreement.
12 Special Counsel shall provide thirty (30) days advance written notice to the City Attorney
13 whenever it has reason to believe that fees it expects to incur under this Agreement, when
14 added to all fees and costs previously incurred, will approach exceeding seventy-five
15 percent (75%) of the total not-to-exceed amount. The notice shall state the estimated
16 amount of and the reasons why, additional funds are required to continue performance
17 under the Agreement.

18 5. BILLING.

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

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

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

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

1 or resubmitting it.

2 E. Special Counsel shall submit invoices no later than the fifteenth
3 (15th) day of the month following the month in which Services were performed and
4 actual costs incurred. If Special Counsel submits invoices after said date, then the
5 invoice(s) may be subject to a discount of ten percent (10%) for each month or
6 portion thereof that the invoice is not timely submitted.

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

13 7. LITIGATION REPORT AND BUDGET.

14 A. Litigation Report for Litigation Matters, Other Than Workers'
15 Compensation.

16 i. Within ninety (90) days of commencing work on a
17 litigation matter (other than workers' compensation), Special Counsel shall
18 submit a written litigation report and budget directed to the City Attorney or
19 designee for his/her review and approval.

20 ii. The litigation report shall include at least all of the
21 following: (1) case analysis, including potential exposure, (2) potential
22 pleadings to be filed, (3) an outline of discovery planned, (4) suggested
23 retention of expert witnesses and the identity of the proposed expert
24 witnesses, and (5) anticipated law and motion practice up to trial.

25 B. Litigation Report and Settlement Authority for Workers'
26 Compensation Matters.

27 i. Within fourteen (14) days of commencing work on a
28 workers' compensation matter, Special Counsel shall submit a written

1 litigation report and budget directed to the City Attorney or designee for
2 his/her review and approval.

3 ii. The litigation report shall include at least all of the
4 following: (1) case analysis, including potential exposure, (2) outline of
5 discovery, (3) suggestions regarding use of Independent Medical Examiners
6 (Safety Officers only), Agreed Medical Examiners, Panel Qualified Medical
7 Examiners, Billing Experts, Medicare Set Aside Experts, Structured
8 Settlement companies or other recommended experts and the identity of the
9 proposed expert witnesses, and (4) plan of action towards expeditious
10 resolution.

11 iii. The City handles subrogation matters in-house,
12 however litigation reports must consider subrogation issues if relevant.

13 iv. With the consent of claims examiner, Special Counsel
14 shall submit all requests for settlement authority to the City Attorney or
15 designee. Requests for settlements over Fifty Thousand Dollars (\$50,000)
16 require the prior approvals of the City Attorney or designee and the City
17 Council.

18 C. Accompanying the litigation report for all matters, Special
19 Counsel shall also submit a written budget that lists the anticipated fees for each
20 action described in the litigation report, broken down by activity. Upon review and
21 approval of the written budget by the City Attorney, and upon incorporation in an
22 amendment signed by both parties, the amount set forth in such budget shall be the
23 new "not-to-exceed" amount under Section 3 of this Agreement.

24 D. Any updated or revised budget shall point out and explain each
25 material modification or change from previous budgets.

26 E. In addition to the foregoing and any other requirements set forth
27 in this Agreement, the City Attorney or designee may at any time request a written
28 report, written budget or timeline for the Matter. If requested, the budget shall

1 include all projected fees and costs to be incurred by Special Counsel for the Matter,
2 commencing on the date that Special Counsel receives the request. The budget
3 and timeline shall include the specific tasks to be performed (including such things
4 as discovery and motions for trial, preparation of documents for transactional
5 services, and anticipated research and investigations; and for workers'
6 compensation matters, trial and hearing preparation, lien review and analysis, and
7 sub rosa). Special Counsel shall identify the projected total hours that will be billed
8 and who will be performing those hours of service, plus fees and costs for each task.
9 The budget and timeline shall be a good faith estimate and as complete as possible.
10 Any deviation from the budget and any deviation over 10% on any task identified on
11 the budget must be discussed in advance with the City Attorney or designee, and
12 the billing related to that task is subject to adjustment so as to conform to the budget.
13 In addition, the City Attorney or designee may request a written budget and timeline
14 similar to the one described above, but relating specifically to one or more tasks
15 necessary to the Matter.

16 F. Special Counsel shall consult closely with, and obtain prior
17 written approval of the City Attorney or designee, before hiring or otherwise incurring
18 any obligation to pay other counsel, specialists, consultants, experts, or undertaking
19 any unusual or high-dollar expenditure in connection with the Matter. Failure to
20 obtain said prior written approval, or failure to submit a written report and budget as
21 required under this Agreement, may result in a denial in payment of invoices.

22 8. TERM. The term of this Agreement shall begin at 12:01 a.m. on
23 February 1, 2019, and shall end when the Matter is concluded or on fifteen (15) days' prior
24 notice from the City to Special Counsel.

25 9. INSURANCE. As a condition precedent to the effectiveness of this
26 Agreement, Special Counsel shall procure and maintain at its expense for the duration of
27 this Agreement from insurance companies admitted to write insurance in California or from
28 authorized non-admitted insurance companies that have ratings of or equivalent to A.VIII

1 by A.M. Best Company professional liability or errors and omissions liability insurance in
2 an amount not less than One Million Dollars (\$1,000,000) per claim.

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

13 Special Counsel shall deliver to the City certificates of insurance and
14 original endorsements for approval as to sufficiency and form prior to the start of
15 performance hereunder. The certificate and endorsements for each insurance policy shall
16 contain the original signature of a person authorized by that insurer to bind coverage on its
17 behalf. The procuring or existence of insurance shall not be deemed or construed as a
18 limitation on Special Counsel's liability or as performance of or compliance with any
19 indemnity provisions herein. City reserves the right to require complete certified copies of
20 all policies at any time. Special Counsel shall make available to the City all books, records,
21 and other information relating to the insurance required herein during normal business
22 hours. Any modification or waiver of the insurance requirements herein shall only be made
23 with the approval of the City Risk Manager or designee. In addition, Special Counsel shall,
24 at least thirty (30) days prior to expiration of the insurance required hereunder, furnish to
25 the City certificates of insurance and endorsements evidencing renewal of such insurance.

26 10. CONFLICT OF INTEREST. Special Counsel, by executing this
27 Agreement, certifies that, at the time Special Counsel executes this Agreement and for the
28 duration of this Agreement, Special Counsel does not have and will not perform services

1 for any other client which would create a conflict as between the interests of the City
2 hereunder and the interests of such other client, subject to written waiver by the City.

3 11. NONDISCRIMINATION. In connection with performance of Services
4 and subject to applicable rules and regulations, Special Counsel shall not discriminate on
5 the basis of race, religion, national origin, color, age, sex, sexual orientation, gender
6 identity, AIDS, HIV status, handicap, or disability. It is the policy of the City to encourage
7 the participation of Minority Business Enterprises and Women-owned Business
8 Enterprises and the City urges Special Counsel to do likewise.

9 12. MISCELLANEOUS.

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

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

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

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

21 E. If there is any legal proceeding between the parties to enforce
22 or interpret this Agreement or to protect or establish any rights or remedies
23 hereunder, the prevailing party shall be entitled to its costs and expenses, including
24 reasonable attorneys' fees and court costs (including appeals).

25 F. The acceptance of Services or payment of money by the City
26 shall not operate as a waiver of any provision of this Agreement. The waiver of any
27 breach of this Agreement shall not constitute a waiver of any other or subsequent
28 breach of this Agreement.

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

13. NOTICE. Notice shall be in writing and personally delivered or deposited in the U.S. Mail, first class, postage prepaid to Special Counsel at Rutan & Tucker, Attn.: M. Katherine Jenson, 611 Anton Boulevard, Suite 1400, Costa Mesa, CA 92626; and to the City at 333 West Ocean Boulevard, 11th Floor, Long Beach, California 90802, Attn.: City Attorney. Notice may be given by fax to the City Attorney at (562) 436-1579 and to Special Counsel at 714-546-9035, provided that duplicate notice is simultaneously delivered or mailed. Notice shall be deemed given on the date of personal delivery or forty-eight hours after deposit in the mail. Notice of change of address shall be given as described herein for other notices.

14. DEFENSE AND INDEMNIFICATION. Special Counsel agrees to defend and indemnify City and its officers, agents and employees against, and to hold and save them harmless from, any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the willful or negligent act, errors or omissions of Special Counsel, its agents, employees, or subcontractors, in performance of services under this Agreement, excepting claims of professional negligence or malpractice. Nothing herein shall be deemed to affect or waive City's rights to make or pursue claims of professional negligence or malpractice against Special Counsel.

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

RUTAN & TUCKER

DATED: May 22, 2019

By M. Katherine Jensen

Print Name: M. Katherine Jensen

Title: Partner

Tom Modica
Assistant City Manager

"Special Counsel"

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

CITY OF LONG BEACH, a municipal corporation

DATED: 5/31/19

By [Signature]
City Manager

"City"

Approved as to form on 5/28/19, 2019

CHARLES PARKIN, City Attorney

By [Signature]
City Attorney

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

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

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

1 discretion, determine if such value was added.

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

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

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

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

28 9. The City will not reimburse for overtime, word processing (document

1 production), supplies, anything identified on an invoice as “miscellaneous”, or any other
2 unidentified charges.

3 10. Special Counsel shall normally use the U.S. Mail and regular attorney
4 services to send and to file papers and other materials. The City reserves the right to
5 reduce excessive charges for messengers and Federal Express or other similar services
6 which are not fully explained or which are not necessary, in the City’s determination.

7 11.

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

15 B. As used in these Guidelines, “local travel” means travel that is
16 100 miles or less from the office of Special Counsel or from his/her home. “Extended
17 travel” means travel that is more than 100 miles from the office of Special Counsel
18 or from his/her home.

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

24 D. The City must approve all extended travel in advance. The City
25 will reimburse fifty percent (50%) of the actual costs of extended travel, unless
26 Special Counsel can substantiate the need for full reimbursement. Special Counsel
27 shall use its best efforts to make airline reservations far enough in advance to take
28 advantage of reduced air fares and shall take advantage of other promotional air

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fares that reduce costs. In any case, travel by air shall be at economy, coach, or other lower fare. The City will not reimburse for travel insurance.

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

F. 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.

G. 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.

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

ADDENDUM

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NAME	POSITION/TITLE	HOURLY RATE
Kathy Jenson	Partner	\$335
Peter Howell	Partner	\$335
Bill Shaeffer	Partner	\$335
Jeff Melching	Partner	\$335
Bill Ihrke	Partner	\$335
Jeff Oderman	Partner	\$335
Dave Cosgrove	Partner	\$335
Doug Dennington	Partner	\$335
Phil Kohn	Partner	\$335
John Ramirez	Partner	\$335
Richard Montevideo	Partner	\$335
Bob Owen	Partner	\$335
Mike Rubin	Partner	\$335
Hans Van Ligten	Partner	\$335
Jeremy Jungreis	Partner	\$335
Joseph Larsen	Partner	\$335
Alisha Patterson	Partner	\$335
Ajit Thind	Partner	\$335
Alan Fenstermacher	Associate	\$335
Allison LeMoine-Bui	Associate	\$335
Travis Van Ligten	Associate	\$335
Emily Webb	Associate	\$335
Morgan Gallagher	Associate	\$335
Thai Phan	Associate	\$335

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

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Trevor Buhr	Associate	\$335
Jeff Farano	Associate	\$335
Kim Sarshar	Paralegal	\$175
Dennis Nakata	Paraletgal; E-Discovery Coordinator	\$175
Kyre Stucklin	Practice Support Manager	\$175
Arlen Bristol	Director of Library Services	\$175
Daniel Huizar	Library staff	\$45
Barrett Gould	Document clerk	\$45
Michael Hoff	Document clerk	\$45