

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

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FIFTEENTH AMENDMENT TO AGREEMENT NO. 28728
28728

THIS FIFTEENTH AMENDMENT TO AGREEMENT NO. 28728 is made and entered, in duplicate, as of August 17, 2016, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on August 16, 2016, by and between THE LAW OFFICES OF M. BRIAN MCMAHON ("Special Counsel"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City and Special Council entered into Agreement No. 28728 (the "Agreement") on March 1, 2004 whereby Special Council agreed to provide Legal Services in connection with the litigation of Long Beach Oil Development Company v. City of Long Beach, Case No. CV 03-6655; and Long Beach Oil Development Company v. City of Long Beach, Case No. BC 375503 in the amount of \$200,000; and

WHEREAS, a First Amendment to the Agreement was entered on July 6, 2004, adding \$100,000 for a total not to exceed amount of \$300,000; and

WHEREAS, a Second Amendment to the Agreement was entered on September 9, 2004, adding \$300,000 for a total not to exceed amount of \$600,000; and

WHEREAS, a Third Amendment to the Agreement was entered on February 8, 2005, adding \$300,000 for a total not to exceed amount of \$900,000; and

WHEREAS, a Fourth Amendment to the Agreement was entered on June 30, 2005, adding \$100,000 for a total not to exceed amount of \$1,000,000; and

WHEREAS, a Fifth Amendment to the Agreement was entered on June 15, 2005, adding \$350,000 for a total not to exceed amount of \$1,350,000; and

WHEREAS, a Sixth Amendment to the Agreement was entered on November 15, 2005, adding \$300,000 for a total not to exceed amount of \$1,650,000; and

WHEREAS, a Seventh Amendment to the Agreement was entered on June 20, 2006, adding \$100,000 for a total not to exceed amount of \$1,750,000; and

WHEREAS, an Eighth Amendment to the Agreement was entered on September 12, 2006, adding \$200,000 for a total not to exceed amount of \$1,950,000; and

1 WHEREAS, a Ninth Amendment to the Agreement was entered on October
2 24, 2006, adding \$150,000 for a total not to exceed amount of \$2,100,000; and

3 WHEREAS, a Tenth Amendment to the Agreement was entered on
4 December 3, 2007; adding \$150,000 for a total not to exceed amount of \$2,250,000; and

5 WHEREAS, an Eleventh Amendment to the Agreement was entered on April
6 1, 2008; adding \$200,000 for a total not to exceed amount of \$2,450,000; and

7 WHEREAS, a Twelfth Amendment to the Agreement was entered on January
8 6, 2009, adding \$100,000 for a total not to exceed amount of \$2,550,000; and

9 WHEREAS, a Thirteenth Amendment to the Agreement was entered on June
10 23, 2009, adding \$150,000 for a total not to exceed amount of \$2,700,000; and

11 WHEREAS, a Fourteenth to the Agreement was entered on December 14,
12 2010, adding \$150,000 for a total not to exceed amount of \$2,850,000; and

13 WHEREAS, City and Special Counsel desire to add \$15,000 for a total not to
14 exceed amount of \$2,865,000;

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

17 1. Section 3 of the Agreement is hereby amended in its entirety to read:

18 "3. Fee. City shall pay to Special Counsel in due course of payments
19 compensation at the hourly rates identified in the staffing profile and reimbursement of
20 costs as further described in the 'Guidelines' also attached hereto, not to exceed Two
21 Million Eight Hundred Sixty-Five Thousand Dollars (\$2,865,000)."

22 2. Except as expressly modified herein, all of the terms and conditions
23 contained in Agreement No. 28728 are ratified and confirmed and shall remain in full force
24 and effect.

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1 IN WITNESS WHEREOF, the parties have caused these presents to be duly
2 executed with all formalities required by law as of the date first stated above.

3 LAW OFFICES OF M. BRIAN MCMAHON

4 September 6, 2016

5 By M. Brian McMahon
6 Name M. BRIAN McMAHON
7 Title Principal

8 "Special Counsel"

9 CITY OF LONG BEACH, a municipal
10 corporation

11 Sept. 16, 2016

12 By [Signature] EXECUTED PURSUANT
13 TO SECTION 301 OF
14 THE CITY CHARTER.
15 City Manager

16 "City" Assistant City Manager

17 This Fifteenth Amendment to Agreement No. 28728 is approved as to form
18 on September 14, 2016.

19 CHARLES PARKIN, City Attorney

20 By [Signature]
21 Deputy

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25 Lona Beach, CA 90802-4664

GUIDELINES FOR BILLING

In addition to the provisions stated in the Agreement, the following guidelines for billing applies:

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 writing to the

1 City Attorney or designee, the reasons why additional funds will be required to complete
2 the Services. Special Counsel is cautioned that the City cannot pay invoices which reflect
3 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 maximum
7 efficiencies and that Special Counsel has not already performed research in the same or
8 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 only
11 be held as needed, and will be kept to a minimum. Intra-office conferences shall be for the
12 purpose of discussing strategy and legal issues which directly further the Matter. The City
13 will not pay for conferences which are supervisory or instructional (including conferences
14 regarding case management). Any invoice which lists an intra-office conference that
15 exceeds these guidelines must contain a full explanation and is subject to reduction by the
16 City. The City will not pay for "team meetings" and the City will scrutinize all intra-office
17 conferences for "value added" to the Matter by the intra-office conference, for the number
18 of individuals attending the intra-office conference, the length of the conference, the
19 subject(s) discussed at the conference and who participated in it and will, in the City's sole
20 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, closing
27 or organizing files; or other similar tasks.

28 7. Vague billing which does not contain sufficient information to allow the

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

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

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

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

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

26 12. A. The City will reimburse travel costs of Special Counsel only as
27 described herein. Travel costs not addressed in these Guidelines are not reimbursable.
28 Travel costs must be reasonable. The City will not reimburse for travel by more than one

1 person of Special Counsel, unless approved in writing by the City Attorney or designee in
2 advance of such travel. The City will not reimburse for excess costs caused by an indirect
3 route chose for Special Counsel's personal reasons.

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

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

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

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

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

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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
M. Brian McMahon		\$350.00
Debbie McMahon		\$35.00 \$ 75.00
Keith A. Yeoman		\$230.00

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