

**AGREEMENT FOR LEGAL SERVICES**

**29442**

THIS AGREEMENT FOR LEGAL SERVICES is made and entered, in duplicate, as of April 1, 2005, for reference purposes only, by and between VAN BLARCOM, LEIBOLD, MCCLENDON & MANN ("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, the estimated expenditure for the Services was expected to be less than One Hundred Thousand Dollars (\$100,000.00) so a purchase order was originally issued; and

WHEREAS, several factors have caused the estimated expenditures to exceed One Hundred Thousand Dollars (\$100,000.00) so that a contract for services is now required by the Municipal Code.

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 to: Provide Legal Services for Land Use, Redevelopment, and Housing Matters (the "Services" or the "Matter"). The City has engaged Special Counsel because Special Counsel is uniquely qualified in the area of law required.

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

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

3. Fee. City shall pay to Special Counsel in due course of payments compensation at the hourly rates identified in the staffing profile and reimbursement of costs as further described herein and in the "Guidelines" also attached hereto, not to exceed Two Hundred Fifty Thousand (\$250,000.00), which includes the amount previously expended under the Purchase Order.

4. Billing.

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

B. Each task shall be distinctly and completely identified; the City will not pay invoices which contain block billing. The billing entry must contain the name or

initials of the individual performing the task, the nature of the task, the date it was performed, and the length of time it took.

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

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

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

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

6. Term. The term of this Agreement shall begin at 12:01 a.m. on April 1, 2005, and shall end when the Matter is concluded or on fifteen (15) days' prior notice from the City to Special Counsel.

7. Insurance. As a condition precedent to the effectiveness of this Agreement, Special Counsel shall procure and maintain at its expense for the duration

of this Agreement from insurance companies admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company professional liability or errors and omissions liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

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

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

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

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

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

10. Miscellaneous.

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

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

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

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

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

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

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.

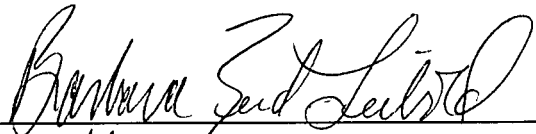
11. Notice. Notice shall be in writing and personally delivered or deposited in the U.S. Mail, first class, postage prepaid to Special Counsel at Van Blarcom, Leibold, McClendon & Mann, 23422 Mill Creek Drive, Suite 105, Laguna Hills, California 92653, Attention: Barbara Leibold and to the City at 333 West Ocean Boulevard, Long Beach, CA 90802 Attn: City Attorney. Notice may be given by fax to the City Attorney at (562) 436-1579 and to Special Counsel at (949) 457-6305, 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.

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.

VAN BLARCOM, LEIBOLD, MCCLENDON & MANN

Date: 9-23, 2005

By   
Title: Shareholder

CITY OF LONG BEACH, a municipal corporation

Date: 1-11, 2006

By   
City Manager

This Agreement is approved as to form on January<sup>9</sup>, 2006.

ROBERT E. SHANNON, City Attorney

By 

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

4. 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.

5. 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 discretion, determine if such value was added.

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

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

8. All Services billed by attorneys and paralegals must be actual legal services requiring the expertise of a legal provider. The City will not pay for more than

eight (8) hours of Services per day without a detailed explanation of the need for time over eight hours and may reduce the invoice if the explanation is unsatisfactory, in the City's sole discretion.

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

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

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

12. A. The City will reimburse travel costs of Special Counsel only as described herein. Travel costs not addressed in these Guidelines are not reimbursable. Travel costs must be reasonable. The City will not reimburse for travel by more than one person of Special Counsel, unless approved in writing by the City Attorney or

designee in advance of such travel. The City will not reimburse for excess costs caused by an indirect route chosen for Special Counsel's personal reasons

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

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

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

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.

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.

**ADDENDUM**

<b><u>NAME</u></b>	<b><u>POSITION/TITLE</u></b>	<b><u>HOURLY RATE</u></b>
Barbara Zeid Leibold	Attorney	\$170
Ron Van Blarcom	Attorney	\$170
John McClendon	Attorney	\$170
David Mann	Attorney	\$170
Steve Miles	Attorney	\$170
Joy Otsuki	Attorney	\$170
Alisha Santana	Attorney	\$170
Joyce Rosenthal	Paralegal	\$ 90

**EFFECTIVE through January 31, 2006**

**REVISED ADDENDUM  
RATE SCHEDULE EFFECTIVE FEBRUARY 1, 2006**

<b><u>NAME</u></b>	<b><u>POSITION/TITLE</u></b>	<b><u>HOURLY RATE</u></b>
Barbara Zeid Leibold	Attorney	\$200
Ron Van Blarcom	Attorney	\$200
John McClendon	Attorney	\$200
David Mann	Attorney	\$200
Steve Miles	Attorney	\$200
Joy Otsuki	Attorney	\$200
Alisha Santana	Attorney	\$200
Joyce R. Rosenthal	Paralegal	\$110