

# 28728

## TWELFTH AMENDMENT TO AGREEMENT NO. 28728 FOR LEGAL SERVICES

1 THIS TWELFTH AMENDMENT TO AGREEMENT NO. 28728 FOR LEGAL  
2 SERVICES is made and entered, in duplicate, as of January 6, 2009, pursuant to a  
3 minute order adopted by the City Council of the City of Long Beach on January 6, 2009,  
4 by and between THE LAW OFFICES OF M. BRIAN MCMAHON, hereinafter referred to  
5 as "Special Counsel," and the CITY OF LONG BEACH, a municipal corporation,  
6 hereinafter referred to as "City" amending that certain agreement ("Agreement") between  
7 Special Counsel and City and identified by the City as Contract No. 28728.

8 WHEREAS, an Agreement for Legal Services with the Law Firm of M. Brian  
9 McMahon was entered into, for reference purposes only, on March 1, 2004, in the  
10 amount of \$200,000.00; and

11 WHEREAS, a First Amendment to Agreement for Legal Services was  
12 entered on July 6, 2004, adding \$100,000.00; and

13 WHEREAS, a Second Amendment to Agreement for Legal Services was  
14 entered on September 9, 2004, adding \$300,000.00; and

15 WHEREAS, a Third Amendment to Agreement for Legal Services was  
16 entered on February 8, 2005, adding \$300,000.00; and

17 WHEREAS, a Fourth Amendment to Agreement for Legal Services was  
18 entered on June 30, 2005, adding \$100,000.00; and

19 WHEREAS, a Fifth Amendment to Agreement for Legal Services was  
20 entered on June 15, 2005, adding \$350,000.00; and

21 WHEREAS, a Sixth Amendment to Agreement for Legal Services was  
22 entered on November 15, 2005, adding \$300,000.00; and

23 WHEREAS, a Seventh Amendment to Agreement for Legal Services was  
24 entered on June 20, 2006, adding \$100,000.00; and

25 WHEREAS, an Eighth Amendment to Agreement for Legal Services was  
26 entered on September 12, 2006, adding \$200,000.00; and

27 WHEREAS, a Ninth Amendment to Agreement for Legal Services was  
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1 entered on October 24, 2006, adding \$150,000.00; and

2 WHEREAS, a Tenth Amendment to Agreement for Legal Services was  
3 entered on December 3, 2007; adding \$150,000.00; and

4 WHEREAS, an Eleventh Amendment to Agreement for Legal Services was  
5 entered on April 1, 2008; adding \$200,000.00; and

6 WHEREAS, a Twelfth Amendment to Agreement No. 28728 for Legal  
7 Services is required to increase the amount by \$100,000.00 in connection with the  
8 litigation of Long Beach Oil Development Company vs. City of Long Beach, Case No. CV  
9 03-6655; and Long Beach Oil Development Company vs. City of Long Beach, Case No.  
10 BC 375503.

11 NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the  
12 parties hereto as follows:

13 Section 3 of said Contract No. 28728 is hereby amended in its entirety to  
14 read:

15 3. Fee. City shall pay to Special Counsel  
16 in due course of payments compensation at the hourly  
17 rates identified in the staffing profile and reimbursement  
18 of costs as further described in the 'Guidelines' also  
19 attached hereto, not to exceed Two Million Five Hundred  
20 Fifty Thousand Dollars (\$2,550,000.00).

21 Sec. 2. Except as provided herein Agreement No. 28728, shall remain  
22 unchanged and in full force and effect.

23 IN WITNESS WHEREOF, the parties hereto have caused these presents to  
24 be duly executed with all the formalities required by law on the respective dates set forth  
25 opposite their signatures.

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SPECIAL COUNSEL

LAW OFFICES OF M. BRIAN MCMAHON

DATED: January 9, 2009

By M. Brian McMahon

Title: Principal

CITY OF LONG BEACH, a municipal corporation

DATED: 1/20/09

By [Signature]  
City Manager

The foregoing TWELFTH Amendment to Agreement No. 28728 for Legal Services approved as to form this 14 day of January 2009.

ROBERT E. SHANNON, City Attorney

By [Signature]  
J. Charles Parkin  
Principal Deputy City Attorney

**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
M. Brian McMahon		\$350.00
Randy R. Merritt		\$290.00
Debbie McMahon		\$ 35.00
Keith A. Yeoman		\$230.00

Rates Revised - March 7, 2008