



# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**THROUGH:** David N. Carmany, City Manager

**FROM:** Clay J. Curtin, Management Analyst

**DATE:** September 6, 2011

**SUBJECT:** Consideration of a Resolution Appointing Roxanne Diaz as City Attorney and Approving a Legal Services Agreement with Richards, Watson & Gershon for City Attorney Services at the Monthly Rate of \$19,500

### RECOMMENDATION:

Staff recommends the City Council adopt Resolution No. 6327 appointing the law firm of Richards, Watson & Gershon ("RWG") to discharge the duties of the office of City Attorney, with its shareholder Roxanne Diaz serving as City Attorney and its shareholder Larry Wiener serving as Senior Counsel, and approving the proposed Agreement Between the City of Manhattan Beach and Richards, Watson & Gershon, a Professional Corporation, for City Attorney Services (the "RWG Proposed Agreement").

### FISCAL IMPLICATION:

The RWG Proposed Agreement provides for a flat rate of \$19,500 per month for General City Attorney legal services, to be supplemented by expenditures for additional legal services as needed. When added to the current year-to-date legal expenditures, the City Attorney program may exceed this year's budget by approximately \$31,000. Staff will monitor the expenditure patterns in the coming months and may recommend a budget adjustment later this year if necessary. Staff anticipates expenditures associated with this contract going forward to be consistent with or below the City's historic expenditures for City Attorney legal services

### BACKGROUND:

At its May 17, 2011, meeting, the City Council established an Ad Hoc City Attorney Selection Subcommittee and appointed Councilmembers Howorth and Lesser as its two members. The subcommittee's task was to develop a Request for Proposals for City Attorney Services ("RFP") and a process for selecting a City Attorney.

The subcommittee held publicly noticed meetings to gather input regarding the form and content of the RFP on May 24, 2011, and May 31, 2011. It subsequently worked with staff to incorporate the public comments it received into the final RFP document. Based on direction from City Council at its City Attorney Study Session on May 2, 2011, the subcommittee structured the RFP to encourage proposals from law firms or individuals who would serve as an independent contractor rather than

as a City employee.

After approval by the City Council on June 7, 2011, the RFP was distributed and advertised for over three (3) weeks with a submission deadline of July 1, 2011. City staff forwarded the RFP to approximately thirty (30) Southern California law firms with municipal law practices and advertised it through multiple sources including the League of California Cities' online magazine *Western City*, websites of several municipal government associations, and *The Beach Reporter*. The subcommittee then held publicly noticed meetings on June 21, 2011, and June 28, 2011, to gather additional public input on how to evaluate the responses to the RFP.

The City received twelve (12) responses to the RFP before the July 1, 2011, deadline. These included eleven (11) proposals and one (1) decline-to-bid letter. All eleven (11) proposals were from law firms.

The City Council discussed and approved a process for reviewing the City Attorney proposals at its July 5, 2011, meeting. The review process involved a "paper screen" by the Ad Hoc City Attorney Selection Subcommittee and called for the subcommittee to recommend three to five (3-5) finalists for interview by the full City Council.

At the July 19, 2011, City Council meeting, the Ad Hoc City Attorney Selection Subcommittee recommended that the full City Council interview four (4) of the eleven (11) law firms that submitted proposals. The recommendation was based on a review of all submitted proposals and writing samples, comments of references provided by the candidates, a meeting with senior City staff to identify the City's historical need for and use of legal services, observations on how the law firms responded to staff inquiries and an opportunity to redact their written submissions, and public input. The City Council voted to consider as finalists the four (4) law firms recommended by the subcommittee, which were in alphabetical order:

- Aleshire & Wynder, LLP of Gardena, CA;
- Colantuono & Levin, PC of Los Angeles, CA;
- Jenkins & Hogen, LLP of Manhattan Beach, CA; and
- Richards, Watson & Gershon PC of Los Angeles, CA.

On July 25, 2011, the City Council held a special meeting to conduct separate interviews with representatives of each of finalists.

## **DISCUSSION:**

### Selection Criteria

The full City Council evaluated the City Attorney finalists based on the selection criteria set forth in the RFP. The selection criteria included the finalists' experience, qualifications, and ability to meet the legal services needs of the City.

In addition, the evaluation focused on each finalist's ability to meet the following "Effectiveness Areas" set forth in the RFP:

- Adherence to the rule of law in representing the City and responsiveness to residents
- Open government, transparency, and democratic governance
- Civic engagement and participatory governance

- Competent representation – doing things right (legal knowledge, research, and analysis)
- Ethical leadership – doing the right things (principle-centered)
- Adherence to legal policies and procedures (promoting the public interest)
- Staff development (legal roles and responsibilities)
- Professional conduct (emotional and mental fortitude)
- Resource management (human and financial resources)
- Inter-governmental governance (networking and coalition building)
- Intra-organizational governance (professionalism and process management)
- Alternative dispute resolution (mediation, conciliation, fact-finding, and arbitration)
- Customer service (public, media, and stakeholder relationships)

The Ad Hoc City Attorney Selection Subcommittee developed interview questions based on input gathered at its public meetings and supplemented with questions by all councilmembers.

#### Proposed Selection of RWG

Following the completion of the finalist interviews on July 25, 2011, the City Council directed Councilmembers Howorth and Lesser, along with the City Manager, to commence discussions with RWG regarding an agreement to provide City Attorney services. The City Council believed RWG best demonstrated the experience, qualifications, and ability to meet the legal services needs of the City.

RWG, based in Los Angeles, has nearly sixty (60) years of experience serving municipal clients. It is one of the state's leading law firms in the area of public and municipal law, land use, the California Environmental Quality Act (CEQA), the Brown Act, and the California Public Records Act. The firm currently employs more than sixty-five (65) attorneys who specialize in issues of critical importance to municipalities. The late former Manhattan Beach Mayor, Assemblyman, and State Senator Robert Beverly co-founded the firm.

The City Council also believed RWG would excel in the Effectiveness Areas set forth in the RFP based on the following:

- The firm highlights professional conduct and ethics as the cornerstone of its legal practice. Its attorneys are actively involved with and participate in presentations at municipal government organizations including the League of California Cities, the City Clerks Association of California, and the Independent Cities Association.
- Attorneys affiliated with the firm routinely provide training to the city staffs and officials of its municipal clients on ethics issues, conflicts of interest, the California Public Records Act, the Brown Act, and compliance with AB1234. One of the firm's shareholders is the former chair of the League of California Cities committee that authored *Ethical Principles for City Attorneys* and served as an author of *Practicing Ethics: A Handbook for Municipal Lawyers*. The firm also sponsored and provided peer review of the Institute of Local Government publication "The ABCs of Open Government Laws" distributed to local agencies throughout the State of California.
- Attorneys affiliated with the firm have broad expertise in municipal contracts, risk mitigation, contractual liability shifting, and other matters that improve efficiency and reduce costs of municipal governments.
- Attorneys affiliated with the firm have expertise in matters of specific interest to the City.

For example, one of the firm's shareholders served in the California Attorney General's office for nearly fifteen (15) years representing the California Coastal Commission and now advises municipalities on coastal issues.

Roxanne Diaz, the designated City Attorney, possesses fifteen (15) years of public law experience, including municipal land use and development projects, complex negotiations, contracting issues, and litigation. Ms. Diaz has worked with the City of Beverly Hills and the Beverly Hills Unified School District on their joint powers agreement amendment in which the two entities mutually benefit from sharing property, services, and funds. She is a co-author of *The People's Business: A Guide to the California Public Records Act* published by the League of California Cities.

For nearly a decade, Ms. Diaz has served as a trainer for the City Clerks Association of California on conflicts of interest, the Brown Act, and Public Records Act. She is a consultant to cities throughout the state on matters of access to public records and transparency. She also provides training to city staff members and officials on drafting municipal contracts, meeting agendas and minutes, and works with city councils and commissions to ensure transparency and democratic governance. Ms. Diaz currently serves as Vice President of the City Attorney's Association of Los Angeles County.

Ms. Diaz is currently the City Attorney for the City of Hidden Hills, Chief Assistant City Attorney for the City of Beverly Hills, General Counsel to the Huntington Park Community Development Commission and the Hub Cities Consortium, a joint powers authority, and Co-General Counsel of the Isla Vista Recreation and Park District. She anticipates relinquishing certain of her current responsibilities if the City approves the RWG Proposed Agreement.

Larry Wiener, the designated Senior Counsel, possesses nearly twenty-five (25) years of public law experience. He specializes in land use, the California Environmental Quality Act, Proposition 218, and various tax and revenue issues. Mr. Wiener authored the original chapter on the California Environmental Quality Act for the California Municipal Law Handbook and the first guidebook on implementation of Proposition 218. He also teaches a course on the Subdivision Map Act for the UCLA public policy program and is a past president of the City Attorney Association of Los Angeles County. Mr. Wiener is currently the Beverly Hills City Attorney, General Counsel to the Las Virgenes-Malibu Council of Governments, and Authority Counsel to the Burbank-Glendale-Pasadena Airport.

#### The RWG Proposed Agreement

To review and negotiate the terms of the RWG Proposed Agreement, the City engaged Sonoma-based attorney Jeffrey Walter. Mr. Walter has over thirty-five (35) years of municipal law experience and serves as city attorney for municipalities, counties, and government agencies in Northern California. He has no financial relationship with RWG.

Key provisions in the RWG Proposed Agreement negotiated by Mr. Walter under the direction of Councilmembers Howorth and Lesser, along with the City Manager, include:

- General City Attorney Services (Section 1.A.): RWG shall provide the City with a wide range of "General City Attorney Services" within its monthly flat rate retainer. Such services shall include providing legal advice to the City Council, City Manager, and City



staff, attending City Council, board, commission, and staff meetings, monitoring litigation, and drafting opinions, memoranda, and resolutions. In addition, RWG shall provide legal advice regarding the City's general liability risk management and insurance programs, prepare and review all agreements, leases, public works contracts and other documents, and offer training related to AB1234, the Brown Act, conflicts of interest, and the California Public Records Act. General City Attorney Services shall also include ten (10) hours each of Employment Law, Environmental, and Real Estate Special Services each month.

- Monthly Retainer (Section 2.A.): RWG shall charge a flat monthly rate of \$19,500 for providing the General Services described in Section 1.A. The amount is consistent with expenditures incurred by the City for City Attorney services during the past five months by the City's Interim City Attorney.
- Additional Services (Section 1.B): RWG shall provide "Additional Services" as needed at a higher hourly rate if representing the City in civil litigation and providing Employment Law, Environmental, and Real Estate services beyond the monthly flat-rate allotment and on any other legal matters. The proposed agreement includes safeguards to monitor the cost of such services. RWG must obtain advance approval from the City Manager prior to commencing Additional Services on any matter, project, assignment, or case that is reasonably likely to result in fees or costs of more than \$7,500.00. Further, commencing six months after the effective date of the RWG Proposed Agreement, and semi-annually thereafter, RWG shall deliver a written report regarding Additional Services, their status, and total fees and costs incurred.
- Ability to Retain Separate, Outside Counsel (Section 1.E.): The City retains the right to engage separate outside counsel for any Additional Services instead of RWG.
- Minimum One-Year Lock on Rates, Charges, and Fees (Section 2.D.): the agreement prohibits RWG from increasing its rates, charges, or fees set forth in the RWG Proposed Agreement for at least one (1) calendar year.
- Term (Section 8): The City retains the right to terminate the RWG Proposed Agreement without cause for any reason upon thirty (30) days written notice rather than at the end of a minimum term.
- Annual Reviews (Section 16): Within six (6) months of the effective date, and annually thereafter, the City Council shall conduct an evaluation of RWG's performance and delivery of legal services.

The RWG Proposed Agreement, if approved by the City Council through the adoption of Resolution 6327 (Attachment A), would become effective immediately.

#### Financial Data

The City sought proposals from independent contractors, rather than hire an in-house attorney, believing that such an arrangement would reduce the City's annual expenditures for legal services. Future expenditures for legal services will depend on the nature, number, and complexity of future legal matters, which are unknown. Historical cost information may be useful in evaluating expenditures for legal services and establishing a baseline for reviewing such expenses in the coming years.

The average cost for City Attorney services over the five (5) year period including FY2006-2007 through FY2010-2011 was \$358,230. The RWG Proposed Agreement provides for an annual fee

of \$234,000.00 (\$19,500.00 per month) for General City Attorney Services. The table below provides a breakdown for the last five (5) years of the City’s expenditures for the staff City Attorney (salary and benefits) and miscellaneous outside special counsel managed by the City Attorney.

	<b>FY06-07</b>	<b>FY07-08</b>	<b>FY08-09</b>	<b>FY09-10</b>	<b>FY10-11</b>
City Attorney (employee salary & benefits)	\$266,181	\$293,029	\$286,149	\$289,808	\$246,864*
Misc. Outside Counsel** (Special Services, Employment Law, Use of Force, Interim City Attorney, etc.)	\$13,033	\$9,9912	\$41,878	\$55,388	\$288,911
<b>TOTAL</b>	<b>\$279,213</b>	<b>\$302,941</b>	<b>\$328,027</b>	<b>\$345,195</b>	<b>\$535,775</b>

\*Note: final year data for the City Attorney (employee) included salary and benefits, plus the cash out of the employee’s unused compensable leave balance (\$23,341).

\*\*Note: this data does not include prosecution (separate contract) or legal defense services for workers compensation or liability cases provided through the City’s third-party administrator.

Attachment:

- A. Resolution No. 6327 Appointing a City Attorney and Approving a Legal Services Agreement with Richards, Watson & Gershon for City Attorney Services

RESOLUTION NO. 6327

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPOINTING A CITY ATTORNEY AND APPROVING A LEGAL SERVICES AGREEMENT WITH THE LAW FIRM OF RICHARDS, WATSON & GERSHON

WHEREAS, the State of California Government Code Section 36505 provides that the City Council in general law cities may appoint a city attorney; and

WHEREAS, the Manhattan Beach Municipal Code Section 2.08.160 provides that the City Council may appoint a City Attorney who shall serve as legal counsel to the City and advise City officials on all legal matters pertaining to City business, and the City Attorney shall not be a member of the classified services and shall report to and serve at the pleasure of the City Council; and

WHEREAS, the law firm of Richards, Watson & Gershon, a legal professional corporation representing that it possesses all of the experience, background, and resources necessary to perform the duties of the City Attorney, has proposed its legal services to the City of Manhattan Beach; and

WHEREAS, the City Council wishes to appoint Richards, Watson & Gershon, with Roxanne Diaz as lead attorney, to serve as City Attorney;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Manhattan Beach, that:

Section 1. The City Council hereby appoints Roxanne Diaz through the law firm of Richards, Watson & Gershon as the City Attorney.

Section 2. The City Council hereby approves the legal services agreement with Richards, Watson & Gershon, attached hereto as Exhibit A and incorporated herein by reference, and authorizes and directs the Mayor to sign the legal services agreement on behalf of the City.

Section 3. This resolution shall take effect from and after the date of its passage. Passed and adopted by the City Council of the City of Manhattan Beach on September 6, 2011, by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

---

Nicholas W. Tell, Jr., Mayor  
City of Manhattan Beach, California

ATTEST:

---

Liza Tamura, City Clerk  
City of Manhattan Beach, California

**AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND RICHARDS, WATSON & GERSHON, A PROFESSIONAL CORPORATION, FOR CITY ATTORNEY SERVICES**

THIS AGREEMENT is entered into between the City of Manhattan Beach, a municipal corporation ("City"), and the law firm of Richards, Watson & Gershon, a professional corporation ("RWG").

WHEREAS, the City wishes to retain RWG to discharge the duties of the office of City Attorney and to designate a member of RWG as City Attorney of the City; and

WHEREAS, RWG wishes to discharge the duties of the office of City Attorney;

NOW THEREFORE, the parties agree as follows:

Section 1.     Legal Services. RWG shall provide the following services to the City:

A.     General City Attorney Services. RWG shall discharge the duties of the office of the City Attorney of City and use its best efforts to provide such services in a professional, thorough, timely and competent manner. Roxanne Diaz shall serve as City Attorney for the City. Larry Wiener shall serve as Senior Counsel to the City and RWG shall use other attorneys as appropriate to serve the City's legal services needs. RWG shall provide to the City all legal services of the type generally provided by a City Attorney's office ("General Services"). General Services shall include, but not be limited to:

1.     Provide legal assistance to the City Council, the City Manager, and staff;
2.     Attend City Council and upon request by the City Manager or his/her designee, commission and committee meetings;
3.     Attend Staff meetings at the request of the City Manager or the City Manager's designee;
4.     Apprise the City of changes in the law that may affect the City;

5. Prepare legal opinions, resolutions, and ordinances;
6. Monitor the handling of litigation and special services by outside legal counsel and prepare a regular status report to the City Council on all pending liability cases;
7. Unless governed by subsection B, below, prepare all legal opinions and written memoranda as needed or requested by the City Manger and/or his/her designee and prepare and/or review all agreements, leases, public works contracts and other documents as needed or requested by the City Manager or his/her designee;
8. Render advice and assistance in the administration of the City's general liability risk management and insurance programs;
9. Provide conflict of interest advice to the City Council and staff;
10. Provide AB 1234, Brown Act, Conflict of Interest, California Public Records Act and other training to Council Members, commissioners and staff, as requested by the City Manager or his/her designee; and
11. Any service of any nature rendered by Roxanne Diaz and/or Larry Wiener.

B. Additional Services. In addition to the General Services provided pursuant to subsection A, RWG shall provide the following additional services (collectively, "Additional Services"):

1. Civil litigation, as assigned by the City, in which the City has been named in a pleading initiating litigation against the City or RWG has filed a pleading on behalf of the City including, without limitation, "Pitchess Motions," as well as any non-judicial adversarial proceedings such as arbitrations and administrative law proceedings and hearings when a pleading or equivalent document has been filed in which the City is a named party ("Litigation Special Services");

2. Employment and Labor Law services, as assigned by the City, including, without limitation, workers' compensation legal services ("Employment Law Special Services");

3. Environmental law services, as assigned by the City, involving hazardous waste issues, the Clean Water Act, the Clean Air Act and similar environmental statutes ("Environmental Special Services"). CEQA advisory services shall be considered General Services and not Environmental Special Services. For purposes of this Agreement "CEQA advisory services" shall mean all services rendered by RWG concerning CEQA not involving Litigation Special Services;

4. Real estate legal services, as assigned by the City ("Real Estate Special Services");

5. Legal services, as assigned by the City, relating to development applications where the developer is reimbursing the City for such services ("Developer Reimbursed Services");

6. Bond counsel, disclosure counsel, issuer's counsel and similar services ("Bond Counsel Services"), as assigned by the City; and

7. Projects not otherwise specified in this subsection B where the City Attorney and the City Manager agree prior to RWG's rendition of services pertinent to the project that the project will take more than twenty five (25) total hours of attorney time to complete ("Major Projects"). In the event that a project which the City Attorney and City Manager agree will take more than twenty five (25) total hours to complete takes less than twenty five (25) hours to complete, then the services rendered by RWG with respect to that project shall be included in General Services.

C. Litigation Special Services shall be provided by members of RWG's litigation department. Employment Law Special Services shall be provided by members of RWG's employment law department. Environmental Special Services shall be provided by members of RWG's environmental law department. Real Estate Special Services shall be provided by members of the RWG's real estate department and Bond Counsel Services shall be

provided by members of RWG's public finance department. Legal services provided by Roxanne Diaz and Larry Wiener in the areas specified in this Subsection C shall be considered General Services, shall not be considered Additional Services and shall not be included in the ten (10) hours of Employment Law, Environmental or Real Estate Special Services which are part of General Services as specified in Exhibit A.

D. RWG must first obtain the City Manager's approval to commence the provision of Additional Services with respect to a matter, project, assignment or case which is reasonably likely to result in RWG incurring more than seven thousand five hundred dollars (\$7,500.00) in fees pursuant to this section 1(B).

E. Notwithstanding anything to the contrary stated above, the City reserves the right to retain separate, outside counsel to perform any Additional Service.

F. Commencing six (6) months after the effective date, and semi-annually thereafter, RWG shall deliver to the City a written report outlining, in summary fashion, the matters, projects, assignments and cases ("matters") with respect to which RWG has provided Additional Services, which said report shall include a description of the nature of said matters handled by RWG during the previous six (6) month period, the status of same and the total fees and costs incurred by RWG in providing the Additional Services with respect to each such matter.

## Section 2. Consideration.

A. Consideration. For General Services as described in subsection A of Section 1, RWG shall be paid a flat rate of \$19,500 per month.

For Additional Services as described in subsection B of Section 1, RWG shall be compensated as provided in Exhibit A.

B. Expenses. RWG shall be reimbursed for actual expenses reasonably incurred in the performance of legal services under this Agreement for long distance telephone calls, court costs, legal research services, service of process, messengers, deliveries, postage, and other similar expenses incidental to the performance of this Agreement. RWG shall not be

reimbursed for word processing and document preparation costs. RWG shall be reimbursed no more than one dollar (\$1.00) per page for facsimiles, with a maximum charge of Twenty-Five Dollars (\$25.00) for any individual facsimile transmission, and no more than five cents (05¢) per page for photocopies; provided that City shall not be charged for facsimile or copying charges in connection with the provision of General Services pursuant to section 1(A) of this Agreement. Mileage, other than routine travel to and from City Hall, will be billed at the standard rate established by the IRS for deducting the operating expenses of an automobile used for business purposes. RWG shall not separately bill nor be paid for attorneys' or other RWG personnel's time spent in traveling to and from City Hall, nor shall RWG separately bill or be paid for Roxanne Diaz's and/or Larry Wiener's time spent in traveling. For all other time RWG's attorneys' or personnel spend in traveling, RWG shall bill and be paid no more than \$250 per hour.

C. Billing. RWG shall send a monthly invoice for services rendered during the previous month and for expenses incurred on the City's account. The monthly invoice shall describe the nature of the work performed, the attorney performing the work and the time spent for each task as well as the nature of any reimbursable expenses incurred. Travel time shall be separately stated and identified in all of RWG's monthly invoices to the City. This level of detail shall be provided in each monthly invoice for both General Services and Additional Services. Upon the request of and as directed by the City Manager or his/her designee, RWG shall generate separate invoices pertaining to specific accounts, matters and/or departments. The City shall process and cause such invoices to be paid promptly, typically within thirty (30) days of receipt.

D. Review of Billings. Jointly, the parties shall periodically review the invoices submitted by RWG to insure that the financial arrangement set forth herein is to the mutual benefit of the parties and is otherwise in the public interest. RWG agrees that it shall not seek to increase the rates, charges or fees set forth herein for at least one calendar year following the effective date of this Agreement.

Section 3. Term. The term of this Agreement shall commence on September 6, 2011 ("effective date") and shall continue until terminated as provided in this Agreement.



Section 4. Indemnification. RWG shall indemnify, defend, and hold harmless the City, and its officers, agents, and employees, from any and all claims, injuries, liabilities of any sort, damages, fees (including costs of defense), expenses or losses resulting or arising from the wrongful or negligent action or inaction of RWG or any person employed by RWG in the performance of this Agreement.

Section 5. Insurance. RWG shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or physical damage to property which may arise from or in connection with the performance of the work by RWG, its agents, representatives, or employees. Additionally, RWG shall procure and maintain for the duration of the Agreement, professional liability insurance. Insurance shall be of the type, in the amounts, and subject to, the provisions described below.

A. Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 11/88) with a minimum limit of one million dollars per occurrence combined single limit.

B. Workers' compensation insurance of at least one million dollars per claim.

C. Professional liability insurance of at least five million dollars per claim and ten million dollars in the aggregate. Such insurance may be subject to reasonable terms, limitations and conditions and a self-insured retention or deductible to be borne entirely by RWG which shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) per claim. RWG shall maintain professional liability insurance or tail coverage, as appropriate, to meet the obligations of this paragraph for a period of four years after the termination of this Agreement.

D. Evidence of Coverage:

1. Within 14 days after approval of this Agreement by the City, RWG shall file with the City Clerk certificates of insurance with original endorsements evidencing coverage in compliance with this Agreement.

2. RWG shall make the insurance policies required by this Agreement, including all endorsements and riders, available to the City for inspection at RWG's office during regular business hours.

3. During the term of this Agreement, RWG shall maintain with the City current valid proof of insurance coverage. Proof of renewals shall be filed prior to expiration of any required coverage.

4. Failure to submit any required evidence of insurance within the required time period shall be cause for termination.

5. In the event RWG does not maintain current, valid, evidence of insurance on file with the City, then the City, may, at its option, defer payment of any moneys owed to RWG, or which are subsequently owed to RWG, until proper proof is filed.

6. All insurance coverage shall be provided by insurers satisfactory to the City and with a rating of B+;VII or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.

7. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

8. RWG's insurance and any insurance provided in compliance with this Agreement shall be primary with respect to any insurance or self-insurance programs covering the City, the City Council, and any officer, agent or employee of the City.

9. Where available, the insurer shall agree to waive all rights of subrogation against the City, and every officer, agent, and employee of the City.

10. Any deductibles or self-insured retentions shall be declared to and are subject to approval by the City. Provided, however, that RWG's professional liability insurance may be subject to a self-insured retention or deductible to be borne entirely by RWG which shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence.

11. In the event that RWG does not provide continuous comprehensive general liability insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at RWG's expense, and the City may deduct all such costs from moneys the City owes to RWG or from moneys which it subsequently owes to RWG.

12. All commercial general liability insurance coverage required to be maintained pursuant to this Agreement by RWG shall name the City, the City Council, and every officer, agent, and employee of the City as additional insureds with respect to work under this Agreement.

Section 6. Successors and Assigns. This Agreement may not be assigned by RWG.

Section 7. Facilities and Equipment. RWG shall, at its own cost and expense, provide all facilities and equipment at its offices which may be required for the performance of services required by this Agreement. With the consent of the City, RWG shall also provide at its own expense facilities and equipment in the City Attorney's Office at City Hall to allow RWG attorneys to access the full resources of the law firm.

Section 8. Termination. This Agreement may be terminated by the City, with or without cause, upon thirty (30) days written notice. RWG shall be entitled to the compensation earned by it prior to the date of termination.

RWG may terminate this Agreement with the consent of the City or if RWG reasonably believes that it cannot provide services consistent with its professional and ethical obligations; provided, however, that in those matters in which RWG is providing Litigation Special Services and the City declines to consent to RWG's withdrawal from such matters, then RWG may withdraw from providing such services only upon order of the court or other tribunal controlling the proceedings in question. In such instance, RWG shall provide the City with reasonable notice in order to allow the City to arrange alternative representation.

Section 9. Files. RWG shall maintain one or more client files (the "Client Files") in connection with providing services in accordance with this Agreement. In such Client Files, RWG may place correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to its representation of the City. The

Client Files shall be and remain the property of the City. RWG shall control the physical location of such legal files during the term of this Agreement. RWG may also place in such Client Files documents containing RWG's attorney work product, mental impressions or notes ("Work Product"). The Work Product shall be and remain RWG's property. Notwithstanding that Work Product shall be RWG's property, upon request by the City; RWG shall provide the City with copies of any and all Work Product prepared in connection with services performed pursuant to this Agreement. In addition, electronic documents such as e-mail and documents prepared on RWG's word processing system, but which have not been printed in hard copy, shall be and remain RWG's property and shall not be considered part of the Client Files, but copies of any such documents or emails prepared in connection with services to the City shall be provided to the City upon request. RWG may enact and implement reasonable retention policies for such electronic documents and RWG has discretion to delete such documents.

At the conclusion of this Agreement, the original Client Files for the City (but not including the Work Product) shall be made available to the City and the City shall have the right to take possession of its Client Files. RWG will be entitled to make copies of the Client Files and the City will be entitled to make copies of the Work Product for the City. At the conclusion of this Agreement, (whether or not the City takes possession of the Client Files) the City shall take possession of any and all original contracts, certificates, and similar documents that may be in the Client Files and RWG shall have no further responsibility with regard to such documents.

If the City does not take possession of the Client Files at the conclusion of the Agreement, RWG shall store such Client Files for a period of at least one (1) year. During the entire time that RWG stores the Client Files, the City shall have the right to take possession of its files at any time. At the conclusion of such one (1) year period, RWG may send to the City a notice, advising of RWG's intention to dispose of the Client Files. The City shall have sixty (60) days from the date of such notice to take possession of the Client Files. If the City does not take possession of the Client Files during that time, then the City agrees that RWG may dispose of the Client Files without further notice. RWG shall have no obligation to abide by the City's document retention schedule or to take any steps except as outlined above or upon written direction from the City.

Section 10. Notice. Whenever it shall be necessary for any party to serve notice on another party respecting this Agreement, such notice shall be served personally, by overnight mail, or by certified mail, return receipt requested, addressed to City at: City Manager of the City of Manhattan Beach, 1400 Highland Avenue, Manhattan Beach, CA 90266; and addressed to RWG at: Roxanne M. Diaz, Richards, Watson & Gershon, 355 S. Grand Ave. 40th Floor, Los Angeles, CA 90071 unless and until a different addresses may be furnished in writing by either party to the other, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

Section 11. Extent of Agreement. This Agreement represents the entire and integrated Agreement between the City and RWG and supersedes any and all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the party affected by the amendment.

Section 12. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 13. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California.

Section 14. Independent Contractor. No employment relationship is created by this Agreement. RWG shall be an independent contractor of City and except as provided herein, shall exercise control over the manner in which it provides the services rendered hereunder. Other than the consideration expressly provided for herein, RWG shall not be entitled to any compensation or benefits, including but not limited to retirement, medical and/or paid leave, for the services RWG renders hereunder.

Section 15. Conflicts of Interest. RWG shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving matters upon which RWG is providing services under this Agreement. RWG shall not reveal confidential or

secret information of the City except with the consent of the City or as otherwise required by law.

RWG shall notify City of any known conflict of interest related to matters upon which RWG is providing services under this Agreement. In the event that such conflict is not or cannot be waived, RWG shall assist and cooperate with separate services provided by outside legal counsel retained by the City on the matter for which the conflict arose.

Section 16. Performance Review. Within six (6) months of the effective date, and thereafter annually, the City Council shall conduct an evaluation of the performance of RWG's delivery of legal services and performance under this Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011, at Manhattan Beach, California.

CITY OF MANHATTAN BEACH  
A Municipal Corporation

By \_\_\_\_\_  
Nick Tell  
Mayor of the City of Manhattan Beach,  
California

ATTEST:

\_\_\_\_\_  
Liza Tamura, City Clerk (SEAL)

RICHARDS, WATSON & GERSHON  
A Professional Corporation

By: \_\_\_\_\_  
Craig A. Steele  
Vice President

**EXHIBIT A**

## Compensation for Additional Services

RWG shall be compensated at the following rates for Additional Services provided pursuant to section 1, subsection B of this Agreement. All time shall be billed in one tenth hour increments.

A. *Litigation Special Services.* RWG shall provide Litigation Special Services at a discount of ten percent from RWG's standard rates with a cap of \$350 per hour, except that RWG will provide Litigation Special Services for Pitchess Motions at the rate of \$195 per hour.

B. *Employment Law Special Services.* RWG shall provide up to ten hours of Employment Law Special Services each month as part of its General Services. Additional Employment Law Special Services shall be provided at the rate of \$195 per hour.

C. *Environmental Special Services.* RWG shall provide up to ten hours of Environmental Special Services each month as part of its General Services. Additional Environmental Special Services shall be provided at the rate of \$225 per hour.

D. *Real Estate Special Services.* RWG shall provide up to ten hours of Real Estate Special Services each month as part of its General Services. Additional Real Estate Special Services shall be provided at the rate of \$225 per hour.

E. *Developer Reimbursed Services.* RWG shall provide Developer Reimbursed Services at a discount of ten percent from RWG's standard rates with a cap of \$350 per hour.

F. *Bond Counsel Services.* Fees for Bond Counsel services would be based on the size of the issuance and as agreed to by RWG and the City prior to the issuance of debt at a rate customary for the industry.

G. *Major Projects.* RWG shall provide legal services for Major Projects at the rate of \$195 per hour.

Additional Services provided by paralegals and legal assistants shall be billed at the rate of \$145 per hour.