



AGENDA REPORT

Meeting Date: July 15, 2008
Item Number: F-8
To: Honorable Mayor & City Council
From: City Attorney
Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE LAW OFFICES OF MICHAEL R. NEBENZAHL FOR LITIGATION SERVICES
Attachments: Agreement

RECOMMENDATION

The City Attorney recommends that the City Council approve an agreement between the City of Beverly Hills and The Law Offices of Michael R. Nebenzahl for litigation services.

INTRODUCTION

The City desires to have the Law Offices of Michael R. Nebenzahl provide special counsel services in connection with tort litigation.

DISCUSSION

Michael R. Nebenzahl has been providing the City with special counsel litigation services in connection with tort litigation for several years at another law firm. Michael Nebenzahl has established his own practice and city desires to enter into an agreement with Law Offices of Michael R. Nebenzahl.

FISCAL IMPACT

Funds are available in the tort litigation budget for Fiscal Year 2008/2009.

Department Approval:



Laurence S. Wiener
City Attorney



Karl Kirkman
Risk Manager

AGREEMENT BETWEEN THE CITY OF BEVERLY
HILLS AND THE LAW OFFICES OF MICHAEL R.
NEBENZAHL FOR LITIGATION SERVICES

This Agreement is entered into in the City of Beverly Hills, between the City of Beverly Hills, a Municipal Corporation (hereinafter "City") and the Law Offices of Michael R. Nebenzahl (hereinafter "Attorney").

Section 1. Attorney's Responsibilities. Attorney shall perform for the City all necessary and reasonable special counsel services in connection with tort litigation as requested by the City, including the following:

- a. Represent the City as lead counsel on tort matters as assigned by the City Attorney.
- b. Provide legal advice and legal services to the City Council, City Manager, and City Attorney and such persons that they may designate.
- c. Prepare reports and opinions as may be requested by the City.
- d. Attend City Council Meetings and additional meetings with City staff as may be requested by the City.

Michael R. Nebenzahl shall be the attorney responsible for the services provided to City pursuant to this Agreement. All work, other than litigation services, shall be performed by Mr. Nebenzahl unless advance approval is obtained from the City Attorney. Before commencing any litigation services, Attorney shall submit to City the names of those attorneys, if any, who will provide litigation services in addition to Mr. Nebenzahl. That list shall be subject to the approval of the City Attorney. The services furnished by Attorney shall be under the direction of the City Attorney.

Section 2. Consideration. For Attorney's services performed pursuant to this Agreement, City shall pay Attorney for the actual time of services rendered by senior management attorneys at the rate of One Hundred Seventy-five Dollars (\$175.00)

per hour for legal services. City shall pay Attorney for the actual time of services rendered by associates at the rate of One Hundred Fifty Dollars (\$150.00) per hour. Time shall be billed in increments of one tenth of one hour.

City shall reimburse Attorney for actual expenses reasonably incurred in the performance of legal services under this Agreement for court costs, services of process, messengers, deliveries, postage, and other similar services incidental to the performance of this Agreement. City shall not reimburse or pay Attorney for word processing, document preparation, or clerical tasks. City and Attorney agree that Attorney shall be reimbursed no more than fifty cents (50¢) per page for facsimiles, with a maximum charge of Forty-Five Dollars (\$45.00) for any individual facsimile transmission, and no more than ten cents (10¢) per page for photocopies.

Attorney shall send a monthly statement for services rendered during the previous month and for expenses incurred on the City's account. The monthly statement 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 fees and expenses incurred.

Section 3. Term. This Agreement shall commence on July 7, 2008 and shall continue until terminated.

Section 4. Indemnification. Attorney shall indemnify, defend, and hold harmless City, City Council, its officers, agents, and employees, from any and all claims or losses resulting from physical injury or damage to tangible property arising from the wrongful or negligent action or inaction of Attorney or any person employed by Attorney in the performance of this Agreement.

Section 5. Insurance.

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

i. 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 (\$1,000,000) per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

ii. Workers Compensation insurance as required by the State of California.

iii. Professional Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000).

b. Evidence of Coverage:

i. Within 14 days after approval of this Agreement by the City, Attorney shall file with the City certificates of insurance with original endorsements evidencing coverage in compliance with this Agreement on the City's standard proof of insurance form, attached hereto as Exhibit A. Except as required by law, the City shall not disclose the information contained on such certificates of insurance.

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

iii. During the term of this Agreement, Attorney shall maintain with City current valid proof of insurance coverage. Proof of renewals shall be filed prior

to expiration of any required coverage and shall be provided on the City's standard proof of insurance form, Exhibit A, attached hereto and incorporated herein. Except as required by law, the City shall not disclose the information contained on such proof of insurance form.

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

v. In the event Attorney does not maintain current, valid, evidence of insurance on file with City, City may, at its option, withhold payment of any moneys owed to Attorney, or which it subsequently owes to Attorney, until proper proof is filed.

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

d. 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.

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

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

g. Any deductibles or self-insured retentions shall be declared to and are subject to approval by City. At the option of the City, either the insurer shall reduce

or eliminate the deductibles or self-insured retentions as respects the City, or Attorney shall procure a bond guaranteeing payment of losses and expenses.

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

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

Section 6. Successors and Assigns. This Agreement may not be assigned by Attorney. This Agreement may not be amended without the written agreement of both parties hereto.

Section 7. Facilities and Equipment. Attorney shall, at its own cost and expense, provide all facilities and equipment which may be required for performance of services required by this Agreement.

Section 8. Termination. This Agreement may be terminated by City, without prior notice, at any time. Attorney shall be entitled to the compensation earned by Attorney prior to the date of termination. Attorney shall be entitled to no further compensation after the date of termination. Attorney reserves the right to terminate this Agreement in the event that City fails to timely pay for Attorney's services after Attorney provides City reasonable notice and opportunity to cure such failure.

Section 9. Notice. Whenever it shall be necessary for either party to serve notice on the other respecting this Agreement, such notice shall be served personally or by certified mail addressed to the City Attorney of the City of Beverly Hills, 455 N. Rexford Drive, Suite 220, Beverly Hills, California, 90210-4817; or to Michael R. Nebenzahl, Law Offices of Michael R. Nebenzahl, 23975 Park Sorrento, Suite 200, Calabasas, CA 91302, unless and until 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 10. Extent of Agreement. This Agreement represents the entire and integrated Agreement between City and Attorney 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 both City and Attorney.

Section 11. 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 12. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California.

Executed on this _____ day of _____, 200_ at Beverly Hills,
California.

CITY OF BEVERLY HILLS,

BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

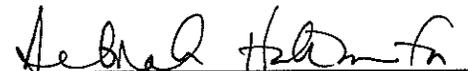
(SEAL)
BYRON POPE
City Clerk

LAW OFFICES OF MICHAEL R.
NEBENZAHL



MICHAEL R. NEBENZAHL

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager



KARL KIRKMAN
Risk Manager



CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	AUTOMOBILE LIABILITY GENERAL LIABILITY PRODUCTS/COMPLETED OPERATIONS BLANKET CONTRACTUAL CONTRACTOR'S PROTECTIVE PERSONAL INJURY EXCESS LIABILITY WORKERS' COMPENSATION					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
 Authorized Insurance Representative

AGENCY: _____

TITLE: _____
 ADDRESS: _____

RM02.DOC REVISED 10/14/96.

EXHIBIT A