



## AGENDA REPORT

**Meeting Date:** November 19, 2013  
**Item Number:** D-11  
**To:** Honorable Mayor & City Council  
**From:** City Attorney  
**Subject:** AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND LATHAM & WATKINS LLP FOR SPECIAL LEGAL COUNSEL SERVICES  
**Attachments:** 1. Amendment

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### RECOMMENDATION

Staff recommends that the City Council move to approve Amendment No. 1 to the Agreement between the City of Beverly Hills and Latham & Watkins LLP for Special Legal Counsel Services.

### INTRODUCTION

In 2003, the City retained Peter Rosen, then with the law firm of Meyer, Brown, Rowe & Maw, to advise the City regarding its insurance coverage in connection with lawsuits involving the oil wells at Beverly Hills High School. Mr. Rosen moved to Latham and Watkins in 2004, but continued to work for the City on insurance coverage issues in connection with the oil well litigation. Ultimately, through Mr. Rosen's work, the City's insurers agreed to defend the City in the litigation.

At the time that Mr. Rosen moved to Latham and Watkins, the firm agreed to maintain the hourly rate of \$250 being charged by Mayer, Brown, Rowe & Maw for advisory services. However, there was an understanding that litigation costs would be set at \$350 per hour and if litigation became necessary, then the City and the firm would revisit the rate to be charged for litigation. The agreement for legal services with Latham and Watkins also provided that the firm could request a fee increase beginning in July of 2005, but no fee increase has been requested or granted since 2004.

### DISCUSSION

The City favorably resolved the underlying oil well litigation several years ago. The City's legal fees in the litigation exceeded five million dollars, most of which had already been reimbursed by insurers during the years of litigation. Following the final conclusion of the litigation, the City spent some considerable time resolving disputes with its insurers and its trial counsel concerning the remaining fees and reimbursement. Once those matters were resolved, the City was faced with approximately \$150,000 in

unreimbursed legal fees, and additional unreimbursed legal fees for pursuing insurance coverage (which is not reimbursable by insurers) and resolving the post litigation disputes mentioned above.

The City has made demands on both Venoco and Wainoco oil companies, who the City believes have an obligation to indemnify the City for these unreimbursed fees. However, the oil companies have not agreed to any reimbursement. As a consequence, the City has filed suit against the oil companies. Latham and Watkins is uniquely qualified to efficiently handle the litigation as Peter Rosen is familiar with the history of the matter.

The law firm has agreed to continue to provide any advisory services at \$250 per hour, but has asked for its litigation rates to be set at \$550 per hour, which is a substantial discount below the firm's standard rates, but a substantial increase above the 2004 agreement.

This matter was reviewed by the Litigation Committee, which includes Council members Brien and Gold, and the Litigation Committee supports the proposed amendment to the contract.

FISCAL IMPACT

This amendment to the agreement with Latham and Watkins will increase the hourly rate for litigation services to \$550 per hour. However, due to Peter Rosen's history with this matter, Latham and Watkins should be able to provide litigation services more efficiently than other potential litigators on behalf of the City.



Laurence S. Wiener  
City Attorney

# **Attachment 1**

**AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND LATHAM & WATKINS LLP FOR SPECIAL LEGAL COUNSEL SERVICES**

This Amendment No. 1 is to that certain Agreement between the City of Beverly Hills, a Municipal Corporation (hereinafter "City") and the law firm of Latham & Watkins LLP (hereinafter "Attorney") dated September 20, 2005 and identified as Contract No. 291-05, a copy of which is on file in the office of the City Clerk.

RECITALS

A. City and Attorney entered into a written Agreement dated September 20, 2005 for special counsel services with respect to insurance coverage and indemnification issues related to the various cases filed concerning alleged exposure to toxic substances at and near Beverly Hills High School

B. This Amendment increases the hourly rates for litigation services.

NOW, THEREFORE, the parties hereto do amend the Agreement as follows:

Section 1. Section 2 of the Agreement entitled "Consideration" shall be amended as follows:

"Section 2. Consideration. For Attorney's services performed pursuant to this Agreement, City shall pay Attorney for the actual time of services rendered by attorneys at the rate of Two Hundred Fifty Dollars (\$250.00) per hour for legal services other than litigation services, and Five Hundred Fifty Dollars (\$550.00) per hour for litigation services. City shall pay Attorney for the actual time of services rendered by paralegals at the rate of One Hundred Eighty Dollars (\$180.00) per hour and for project assistants at the rate of Seventy-Five Dollars (\$75.00) per hour. For the purpose of this Agreement litigation services shall mean services rendered in response to a request by the City to defend or initiate litigation. Time shall be billed in increments of one tenth of one hour.

City shall reimburse Attorney for actual out of pocket expenses reasonably incurred in the performance of legal services under this Agreement for long distance telephone calls, 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 clerical services, word processing, document preparation costs, or filing costs. 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 be provided as a hard copy and in an electronic format in conformance with LEDES format 1998B. The 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. Monthly statements submitted after July 1, 2005 shall also include billing task codes if requested by the City."

Section 2. This Amendment shall be deemed effective as of July 1, 2013. Except as amended by this Amendment No. 1, all terms and conditions set forth in the Agreement shall remain in full force and effect.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at Beverly Hills, California.

CITY OF BEVERLY HILLS,

\_\_\_\_\_  
JOHN A. MIRISCH  
Mayor of the City of  
Beverly Hills, California

[Signatures continue]

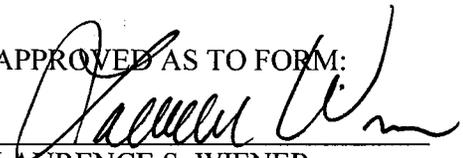
ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

LATHAM & WATKINS LLP

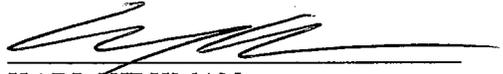
  
\_\_\_\_\_  
By: Peter Rosen  
Title: Partner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager

  
\_\_\_\_\_  
KARL KIRKMAN  
Risk Manager