



## AGENDA REPORT

**Meeting Date:** March 4, 2008  
**Item Number:** F-8  
**To:** Honorable Mayor & City Council  
**From:** City Attorney  
**Subject:** AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BURHENN & GEST LLP FOR SPECIAL COUNSEL SERVICES IN CONNECTION WITH STATE MANDATES FOR RECOVERY OF CERTAIN COSTS

**Attachments:** Agreement

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### RECOMMENDATION

It is recommended that the City Council approve the agreement with Burhenn & Gest LLP.

### INTRODUCTION

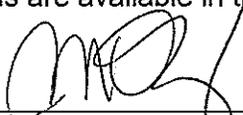
The City Attorney recommends that the City retain Burhenn & Gest LLP to provide special counsel services in connection with recovery of certain costs related to the City's NPDES permit.

### DISCUSSION

A number of cities have retained the law firm of Burhenn & Gest to provide special counsel services in connection with recovery of certain State mandated costs related to the county-wide NPDES permit. In order to minimize the expense of the City's own efforts to recover these costs from the State, the City Attorney recommends that the City also retain Burhenn & Gest to provide such services to the City and to share the common costs with other cities. Under the Agreement, Burhenn & Gest will represent the City in administrative hearings before the Commission on State Mandates for recovery of costs imposed by the state through the Los Angeles County Municipal Stormwater Permit.

### FISCAL IMPACT

Funds are available in the Stormwater Enterprise Fund.

  
\_\_\_\_\_  
Laurence S. Wiener, City Attorney

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND BURHENN & GEST LLP FOR SPECIAL COUNSEL  
SERVICES IN CONNECTION WITH STATE MANDATES FOR  
RECOVERY OF CERTAIN COSTS

This Agreement is entered into by and between the City of Beverly Hills, a Municipal Corporation (hereinafter "City") and the law firm of Burhenn & Gest LLP (hereinafter "Attorney").

Section 1. Attorney's Responsibilities. Attorney shall perform for the City all necessary and reasonable special counsel services in connection with state mandates for recovery of certain costs as requested by City, including the following:

- a. Represent City in proceedings before the Commission on State Mandates for recovery of inspection and trash receptacle costs imposed by the Los Angeles County Municipal Stormwater Permit.
- b. Attend and participate in consultations with the City Council and City staff as may be requested by City.
- c. Perform such other legal services as may be requested by City.

Howard Gest shall be the partner with primary responsibility for the services provided to City pursuant to this Agreement. 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 all attorneys who are partners at the rate of Two Hundred Ninety-Five Dollars (\$295.00) per hour, associates at the rate of Two Hundred Fifty Dollars (\$250.00) per hour and paralegal services at the rate of Ninety-Five Dollars (\$95.00) per hour. Time shall be billed in increments of one tenth of one hour. Other cities have engaged Attorney to represent them in claims for reimbursement before

the Commission. Services that are common to Beverly Hills and other cities represented by Attorney shall be divided equally among such cities.

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 statement for services rendered during and for expenses incurred on City's account. 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. Any expense over \$250 shall include the appropriate back-up documentation for that expense (i.e. invoice, receipt, etc.).

Section 3. Term. The term of this Agreement shall commence on November 1, 2007 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 property damage (including attorneys fees and costs) 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 \$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 City certificates of insurance with original endorsements evidencing coverage in compliance with this Agreement on City's standard proof of insurance form, attached hereto and incorporated herein as Exhibit A.

ii. Attorney shall make the insurance policies required by this Agreement, including all endorsements and riders, available to 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 City's standard proof of insurance form, Exhibit A.

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 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 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 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 City, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects 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, City shall have the right, but not the obligation, to obtain the required insurance coverage at Attorney's expense, and City may deduct all such costs from moneys 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 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 it prior to the date of termination. Attorney shall be entitled to no further compensation after the date of termination.

Section 9. Conflict of Interest.

Except as knowingly authorized by the City in writing or as authorized by Section 10 of the Agreement, Attorney agrees not to accept any employment during the term of this Agreement by any other person or entity which employment is or may likely develop a conflict of interest for Attorney between City's interest and the interests of such other person or entity. "Conflict of Interest," as used herein, shall be defined and interpreted in accordance with Section 1090 of the California Government Code and as set forth in the Rules of Professional Conduct of the State Bar of California.

Section 10. Waiver.

City acknowledges that Attorney represents other cities before the Commission on State Mandates with respect to their claim for reimbursement for costs incurred in complying with the inspection and trash receptacle obligations imposed by the Los Angeles County Municipal Stormwater Permit. City further acknowledges that Attorney has represented and continues to

represent the County of Los Angeles with respect to the County's claim for reimbursement arising from the industrial inspection and the installation of trash receptacles. It is agreed that the City waives any conflict of interest or potential conflict of interest that could arise from Attorney's representation of any other city or the County of Los Angeles with respect to the matters described in this section.

Section 11. 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 Howard Gest, Burhenn & Gest LLP, 624 South Grand Avenue, Suite 2200, Los Angeles, California 90017, 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 12. 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 13. 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 14. 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.

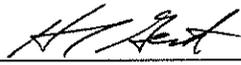
CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
JIMMY DELSHAD  
Mayor of the City of  
Beverly Hills, California

ATTEST:

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

BURHENN & GEST LLP

  
\_\_\_\_\_  
HOWARD GEST  
Partner

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
RODERICK J. WOOD  
City 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	LIMITS		AGGREGATE
				B.I.	P.D.	
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

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**