

## REPORT TO CITY COUNCIL

**DATE:** SEPTEMBER 28, 2016

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER *GR*

**BY:** NATHAN HAMBURGER, ASSISTANT CITY MANAGER *NH*  
CHRISTY PINUELAS, DIRECTOR OF FINANCE *CP*

**SUBJECT:** REQUEST TO APPROVE THE FIRST AMENDMENT TO AGREEMENT FOR LEGAL SERVICES WITH RICHARDS, WATSON AND GERSHON

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The City's legal services agreement with the law firm of Richards, Watson & Gershon (RWG) was entered into in October 2014. Among the categories of services that RWG has the capability to provide the City are bond counsel, disclosure counsel, and issuer counsel services.

The rate structure of RWG's bond counsel, disclosure counsel and issuer counsel services is established at a flat hourly rate of \$325 per hour for all attorneys working on the bond issuance and transaction, provided that the total fee for any single issue or bond shall not exceed an established amount in fees. This is customary for these services on an issue or services of bonds of similar size and complexity. This action would eliminate any perceived financial incentive over the size of the bond issuance or the actual issuance of the bonds. With a flat hourly rate, the compensation is based on the amount of work required and performed, rather than the size of the bond issuance or whether the City actually decides to move forward with the bond issuance.

The reason for the requested change is due to a recent Opinion of the California Attorney General, issued in January, 2016. This Opinion advises that city attorney contract terms that make its bond counsel fees should not be contingent upon the issuance of bonds. Based on this Opinion, staff and the City Attorney are recommending the proposed First Amendment that further clarifies and defines how bond counsel, disclosure counsel, and issuer counsel will be charged. This change in the rate structure for bond counsel services will apply if and when RWG is to provide bond counsel, disclosure counsel, or issuer counsel services.

The current recommended change still maintains the authority of the City Manager, through the direction of the City Council, to impose a cap on fees, but does not make the size of a bond issue express and explicit criteria for that determination. Most importantly, the language still retains the hourly rate fee based on an estimate established by experience for these type of services.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

## **RECOMMENDATION**

**Staff recommends the City Council approve the first amendment to the Agreement for Legal Services with Richards, Watson & Gershon.**

**Attachment: Richards, Watson & Gershon Amendment**

**AMENDMENT NO. 1 TO RESTATED LEGAL SERVICES  
AGREEMENT BETWEEN THE CITY OF AGOURA HILLS AND  
RICHARDS, WATSON & GERSHON, A PROFESSIONAL  
CORPORATION**

**THIS AMENDMENT NO. 1 TO RESTATED LEGAL SERVICES AGREEMENT** ("Amendment") is made and entered into as of September 1, 2016, by and between the City of Agoura Hills ("City") and the law firm of Richards, Watson & Gershon ("RWG"), a California professional corporation. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. **Recitals.** This Amendment is made with respect to the following purposes and facts that each party agrees are true and correct:

A. By that certain Restated Legal Services Agreement, dated as of June 25, 2014 (the "Agreement"), the City retains RWG to provide legal services for the City, and RWG agrees to provide such services.

B. The parties to the Agreement desire to amend Exhibit A to the Agreement regarding compensation for bond counsel services.

2. **Amendment.** The paragraph entitled "Bond Counsel Services" in Exhibit A to the Agreement shall be amended in its entirety to read as follows:

**"Bond Counsel Services.** For providing services as bond counsel, disclosure counsel, or counsel to the issuer ("Bond Counsel Services"), RWG shall be paid at a composite hourly rate of \$325. The total fee shall not exceed an amount which the City Manager deems fair and reasonable under the circumstances.

In the event the City or Successor Agency forms or is a member of a joint powers authority which has the power to issue bonds or other securities, RWG shall provide bond counsel, disclosure counsel and/or issuer counsel services to the joint powers authority in connection with the issuance of bonds or other securities, if and when requested by the joint powers authority. The compensation for services in connection with service to the joint powers authority shall be at the Bond Counsel Services rate unless there is a separate contract or agreement with the joint powers authority that provides a fee schedule or rate."

3. **Modification of Agreement.** Except for the changes specifically set forth in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have caused their duly authorized representatives to sign below.

**CITY OF AGOURA HILLS**

\_\_\_\_\_  
**HARRY SCHWARZ**  
Mayor

Attest:

\_\_\_\_\_  
**KIMBERLY RODRIGUES, MMC**  
City Clerk

**RICHARDS, WATSON & GERSHON,**  
a Professional Corporation

\_\_\_\_\_  
**Kayser Sume**  
Chairman, Board of Directors

## EXHIBIT A

### RICHARDS, WATSON & GERSHON COMPENSATION RATE SCHEDULE CITY OF AGOURA HILLS EFFECTIVE JULY 1, 2014

**General Services.** "General Services" shall include all services except those defined below as "Special Services," "Litigation Services," "Bond Counsel Services," "Third-Party Reimbursed Services," and any other service provided under a separate legal services agreement. Richards, Watson & Gershon ("RWG") shall provide all General Services to the City at the blended hourly rate of \$190 per hour, billed in 1/10th hour increments. Travel time incurred on General Services would be compensated at the General Services rate.

**Special Services.** "Special Services" shall be defined to include all advisory (*i.e.*, non-litigation) service in the substantive areas of labor and employment law, real estate law, water and water rights law, public finance (other than Bond Counsel Services), and environmental law, including but not limited to, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Hazardous Waste, Clean Air Act, Clean Water Act and Porter-Cologne Act (NPDES) issues. Special Services shall be billed and compensated at a composite hourly rate of \$250 an hour for all attorneys, billed in 1/10th hour increments. Travel time incurred on Special Services would be compensated at the Special Services rate.

**Litigation Services.** "Litigation Services" shall include the representation of the City in writs of mandate, injunctions, breach of contract, inverse condemnation, eminent domain, election proceedings, all court proceedings, arbitrations and adversarial administrative proceedings before entities other than the City. Litigation Services will be billed and compensated at RWG's then-current standard hourly rates for the attorney providing such service discounted by 10%. In no event shall RWG's discounted rate exceed Three Hundred Thirty-Five Dollars (\$335) per hour. All such time shall be billed in 1/10th hour increments. Travel time incurred on Litigation Services would be compensated at the Litigation Services rate.

**Bond Counsel Services.** "Bond Counsel Services" shall include representing any City-related entity in the capacity of either Bond Counsel, Issuer Counsel and/or Disclosure Counsel. Bond Counsel Services shall be billed and compensated at a composite hourly rate of \$325 an hour for all attorneys, provided that the total fee for any single issue or series of bonds shall not exceed a total fee which is customary for those services on an issue or series of bonds of similar size and complexity, as approved by the City Manager. All such time shall be billed in 1/10th hour increments. Travel time incurred on Bond Counsel Services would be compensated at the Bond Counsel Services rate.

In the event the proceedings for issuance of the bonds are terminated before closing, RWG would expect to be paid for its services to the date of abandonment at the hourly rate set forth above, but the amount of that payment would be subject to reduction at the sole discretion of the City Manager.

In the event the City or Successor Agency forms or is a member of a joint powers authority which has the power to issue bonds or other securities, RWG shall provide bond counsel, disclosure counsel and/or issuer counsel services to the joint powers authority in connection with the issuance of bonds or other securities, if and when requested by the joint powers authority. The compensation for services in connection with service to the joint powers authority shall be at the Bond Counsel Services Rate unless there is a separate contract or agreement with the joint powers authority that provides a fee schedule or rate.

**Third-Party Reimbursed Services.** "Third-Party Reimbursed Services" shall include all legal services that the City elects to have reimbursed by third-parties. Third-Party Reimbursed Services shall be billed and compensated at RWG's then-current standard hourly rates for the attorney providing such service.

**Reimbursable and/or Other Costs.** Mileage shall be billed at the standard rate established by the IRS for deducting the operating expenses of an automobile used for business purposes. Copying costs will be charged at \$0.15 cents per page. Facsimile charges will be \$1 per page with a maximum charge of \$25 for any one facsimile. All other costs, such as long distance telephone charges, messenger and delivery services, and legal research services will be charged only at RWG's actual out-of-pocket expenses.