



Meeting Date: 04/14/15


ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Stephen M. Fischer, Interim City Attorney Agenda Item No. S-1

Reviewed By: City Manager JM City Attorney SMF Finance for Mike Malone Other (Specify) _____

DATE: March 24, 2015

TO: City Council

FROM: Stephen M. Fischer, Interim City Attorney 
City Attorney

SUBJECT: Agreement for Special Counsel to Provide Consulting Services Related to Human Resources Services, Service Delivery, and Function

RECOMMENDATION

That City Council:

1. Approve and authorize the City Manager to execute an Attorney Services Agreement with Renne Sloan Holtzman Sakai LLP (Agreement No. 7012-15-CA) in the amount of \$240,000.
2. Authorize the special budget appropriation in the amount of \$240,000 from the General Fund Operating Reserve Fund.

DISCUSSION

The Human Resources Department has had several vacant management positions for the past several months. Services under this agreement are to specifically cover duties typically performed by Human Resources Management staff, pending recruitment of currently vacant positions. The services under this agreement are primarily provided by non-attorney consultants affiliated with Renne Sloan Holtzman Sakai LLP who are human resources professionals. This dollar amount covers past invoices and costs of services going forward through the end of the Fiscal Year.

FINANCIAL IMPACT

The agreement will be funded from the General Fund Operating Reserve in the amount of \$240,000.

- Attachment #1 –Agreement for Attorney Services
- Attachment #2 – Special Budget Appropriation

ATTORNEY SERVICES AGREEMENT

This Attorney Services Agreement ("Agreement") is made and entered into in the County of Ventura, State of California, by and between the City of Oxnard, a municipal corporation ("City"), and Renne Sloan Holtzman Sakai LLP engaged in the practice of law in the County of Ventura, California, ("Special Counsel").

WHEREAS, City desires to engage Special Counsel to represent City's interests and to provide legal advice and services to City in a variety of legal matters as determined by the City Attorney; and

WHEREAS, Special Counsel represents that Special Counsel's personnel possess the skills, qualifications and experience necessary to properly perform such services.

NOW, THEREFORE, City and Special Counsel hereby agree as follows:

1. Scope of Services

a. Special Counsel is hereby retained as special counsel for City to provide consulting services related to Human Resources services, service delivery, and function.

b. In litigation matters, the City Attorney is responsible for the ultimate resolution, amounts of damage awards, if any, and defense fees and costs of all cases. Special Counsel shall inform the City Attorney or designee of the status of each case prior to arbitrations, voluntary settlement conferences, mandatory settlement conferences, motions for summary judgment, trial, settlement negotiations and of any significant developments during discovery.

c. Special Counsel shall regularly and reasonably discuss and review with the City Attorney or designee investigation issues, discovery, and case tactics and strategy.

d. Special Counsel shall send case evaluations, correspondence and status reports to the City Attorney.

e. Special Counsel shall inform the City Attorney of the legal staff assigned to cases and matters and promptly advise the City Attorney of any significant change in assignments. Upon request Special Counsel shall provide the City Attorney with resumes of legal staff.

f. If settlement authority is required from City Council, upon request, Special Counsel shall timely prepare and submit to the City Attorney a Confidential Briefing Report for City Council review.

g. Special Counsel agrees to use the expertise of City staff in lieu of outside experts whenever feasible and practical.

h. Special Counsel agrees to handle all significant aspects of the litigation or matter. If Special Counsel intends to assign other special counsels to assist the primary Special Counsel, Special Counsel shall notify the City Attorney in advance. Only those special counsels assigned and approved in advance by the City Attorney may work on cases or matters.

2. Special Counsel Representative

Special Counsel agrees that Dania Torres Wong shall be Special Counsel's representative and shall be personally responsible for the performance and/or coordination of legal services under this Agreement.

3. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Special Counsel from rendering any services for Special Counsel's own account or to any other person or entity as Special Counsel in its sole discretion shall determine. Special Counsel agrees that performing such services will not materially interfere with services to be performed for the City.

4. Direction and Coordination

Special Counsel understands that the City Attorney or designee is responsible for providing management and direction to Special Counsel. Special Counsel agrees to coordinate the services to be provided with the City Attorney to the extent required by the City Attorney, and such services shall be performed to the satisfaction of the City Attorney.

5. Place of Work

Special Counsel shall perform the services provided for in this Agreement at any place or location and at such times as the Special Counsel shall determine.

6. Permits, Licenses, Certificates

Special Counsel, at Special Counsel's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement, including a City business tax certificate.

7. City's Responsibilities

City, through the City Attorney, will cooperate with Special Counsel and will furnish any required information and materials as expeditiously as necessary for the orderly progress of the services. The City Attorney is authorized to examine documents submitted by Special Counsel and to render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of Special Counsel's services.

8. Term of Agreement

This Agreement shall begin on December 1, 2014, and expire on July 31, 2015.

9. Termination of Agreement and Legal Services

This Agreement may be terminated at any time by written notice from either party to the other with or without cause. In the event of such termination, Special Counsel shall be paid for all satisfactory services and costs unless such termination is made for cause, in which event compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

10. Compensation and Reimbursement

a. Compensation

(1) City agrees to pay Special Counsel in an amount not to exceed \$240,000 for services provided under this Agreement.

(2) City agrees to pay for all services provided by Special Counsel's staff under this Agreement at the following hourly rates:

Partners	\$285-\$375
Associates	\$215 - \$285
Non-Attorney Human Resources and Labor Relations Consultants	\$160-\$285
Paralegals	\$105-\$145

(3) Special Counsel agrees that the above hourly rate includes reimbursement to Special Counsel of the expenses of any electronic research, postage, overnight express mail, ordinary and usual in-house copying costs, court fees, courier service, fax charges, telephone usage, general overhead or support services such as typing, word processing, secretarial time of any nature (normal, overflow or overtime), clerical work, equipment rental, calendaring, setting up files, and updating files.

(4) Special Counsel will charge for travel time to and from Burbank Airport.

(5) The above hourly rate may be altered by a writing signed by the City Attorney.

b. Reimbursement

In addition to the compensation provided above, the City shall reimburse Special Counsel as follows:

(1) Actual Cost to Special Counsel:

Air travel - coach
Consultant fees
Copying and printing services fees
Court reporting services fees
Expert fees
Extraordinary in-house copying costs
Service of process fees

(2) Items with Maximums:

Lodging - \$125.00 per night
Witness fees - State court \$35.00 + statutory mileage
Federal court \$40.00 + statutory mileage

11. Method of Payment

a. Special Counsel agrees to submit monthly a statement of account which clearly sets forth by dates the designated items of services and respective time for each item for which the statement is submitted and the identity of the attorney performing the services in a form similar to Exhibit A, attached hereto and incorporated in full herein by this reference.

b. Special Counsel shall mail the invoice for payment to City of Oxnard, Office of the City Attorney, 300 West Third Street, Suite 300, Oxnard, California 93030, Attention: City Attorney.

c. City shall timely pay Special Counsel for services rendered and costs incurred at the rates and in the amounts provided on a monthly basis in accordance with the statements as approved by the City Attorney.

12. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Special Counsel in performing services under this Agreement. All expenses incident to the performance of services under this Agreement shall be borne by Special Counsel, including, but not limited to rent, and vehicle, entertainment and promotion, general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees or agents engaged by Special Counsel. Special Counsel shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the services provided for under this Agreement, including, but not limited to any personal property used by employees and agents of Special Counsel in the performance of such services.

13. Non-Appropriation of Funds

Payments to be made to Special Counsel by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of Special Counsel's services beyond the current fiscal year, this Agreement shall cover payment for Special Counsel's services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

14. Approved Attorneys

a. Special Counsel agrees that the following attorneys shall be the only attorneys assigned to perform services for City: Dania Torres Wong, Allyson Hauk, Burke Dunphy, Charles Sakai, Nikki Hall, Ivan Delventhal, Lauren Monson and Jonathan Holtzman.

b. This list of approved attorneys may be altered by a writing signed by the City Attorney. The writing may add paralegals to those professionals authorized to perform services and provide for rates to be paid for such paralegals.

15. Engagement of Other Counsel, Specialists or Experts

Special Counsel agrees not to engage or otherwise incur an obligation to pay other legal counsel, specialists or experts for services in connection with this Agreement without the prior approval of the City Attorney. City shall not pay a mark-up for outside services obtained by Special Counsel.

16. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Special Counsel under this Agreement shall be confidential and shall not be made available to any third person or organization by Special Counsel without prior written approval of the City Attorney.

17. Indemnity

Special Counsel agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Special Counsel or its agents, employees, subconsultants, consultants and other persons acting on Special Counsel's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, or acts for which Special Counsel or its agents, employees, subconsultants, consultants and other persons acting on Special Counsel's behalf would be held strictly liable.

18. Insurance

a. Special Counsel shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-A, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Special Counsel obtain and maintain such insurance coverages.

b. Special Counsel shall, prior to performance of any services, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-A. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit INS-A.

c. Maintenance of proper insurance coverages by Special Counsel is a material element of this Agreement. Special Counsel's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

19. Independent Contractor

a. City and Special Counsel agree that in the performance of the services, Special Counsel shall be, and is, an independent contractor, and that Special Counsel and its employees are not employees of City. Special Counsel has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Special Counsel.

b. Special Counsel shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Special Counsel's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Special Counsel acknowledges that Special Counsel and Special Counsel's employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

20. Special Counsel Not Agent

Except as provided for in this Agreement, Special Counsel shall have no authority, expressed or implied, to act on behalf of City Attorney in any capacity whatsoever as agents or otherwise. Special Counsel shall have no authority, expressed or implied, unless pursuant to this Agreement to bind the City to any obligation whatsoever.

21. Conflict of Interest

Special Counsel agrees to scrupulously avoid performing services for any party or entering into any contractual or other relationship with any party which might create a conflict

with the rendering of services under this Agreement. Special counsel shall immediately inform the City Attorney of any conflict of interest or potential conflict of interest which may arise during the term of this Agreement by virtue of any past, present, or prospective act or omission of Special Counsel.

22. Assignability of Agreement

This Agreement contemplates personal performance by Special Counsel's personnel and is based upon a determination of the unique competence and experience of Special Counsel's personnel and upon the specialized personal knowledge of Special Counsel's personnel. Assignment of any or all rights, duties or obligations of Special Counsel under this Agreement shall be permitted only with the express written consent of the City Attorney.

23. Fair Employment Practices

a. Special Counsel agrees that all persons employed by Special Counsel shall be treated equally by Special Counsel without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

b. Special Counsel agrees that, during the performance of this Agreement, Special Counsel and any other parties with whom Special Counsel may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Special Counsel agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Special Counsel shall provide City with access to and, upon request, provide copies to City of all of Special Counsel's records pertaining or relating to Special Counsel's employment practices, to the extent such records are not confidential or privileged under State or federal law.

e. Special Counsel agrees to recruit vigorously from protected classes and to encourage businesses owned by persons in a protected class to bid subcontracts.

24. Time of Essence

Special Counsel and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

25. Covenants and Conditions

Special Counsel and City agree that each term and each provision of this Agreement to be performed by Special Counsel shall be construed to be both a covenant and a condition.

26. Governing Law

The City Attorney and Special Counsel agree that the construction and interpretation of this Agreement and the rights and duties of City and Special Counsel hereunder shall be governed by the laws of the State of California.

27. Compliance with Law

Special Counsel agrees to comply with all federal, state and local laws, rules, and regulations, now or hereafter in force, pertaining to the services performed pursuant to this Agreement.

28. Severability

City Attorney and Special Counsel agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

29. Waiver

City and Special Counsel agree that no waiver of a breach of any provision of this Agreement by either Special Counsel or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Special Counsel to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

30. Counterparts

City and Special Counsel agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

31. Arbitration

Special Counsel and City agree that in the event of any dispute with regard to the provisions of this Agreement, the services rendered or the amount of Special Counsel's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

32. Authority to Execute

- a. City acknowledges that the person executing this Agreement has been duly

authorized by the City Council to do so on behalf of the City.

b. Special Counsel acknowledges that the person executing this Agreement has been duly authorized by Special Counsel to do so on behalf of Special Counsel.

33. Notices

a. Any notices to Special Counsel may be delivered personally or by mail addressed to Dania Torres Wong, Esq., Renne Sloan Holtzman Sakai LLP, 350 Sansome Street, Suite 300, San Francisco, California 94104.

b. Any notices to City may be delivered personally or by mail addressed to City of Oxnard, Office of the City Attorney, 300 West Third Street, Suite 300, Oxnard, California 93030, Attention: City Attorney.

34. Amendment

This Agreement may be amended at any time, in writing, by the City Attorney and Special Counsel.

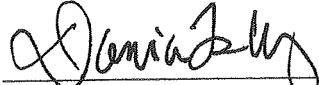
35. Entire Agreement

The City Attorney and Special Counsel agree that this Agreement constitutes the entire Agreement of the parties with respect to the subject matter described herein and supersedes all prior communications, agreements and promises, either oral or written.

CITY OF OXNARD

RENNE SLOAN HOLTZMAN
SAKAI LLP


Greg Nyhoff, City Manager



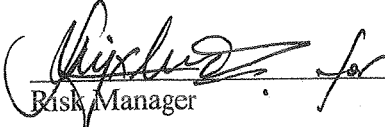
Dania Torres Wong, Esq.

APPROVED AS TO FORM & CONTENT

APPROVED AS TO INSURANCE:



Stephen M. Fischer, Interim City Attorney



Risk Manager

[LAW FIRM]
[Address]
[Telephone Number]
[Date]

Invoice No.

Stephen M. Fischer
Interim City Attorney
Office of the City Attorney
City of Oxnard
300 W. Third Street, Suite 300
Oxnard, CA 93030

Client/Matter No:
Re:

For Professional Services Rendered Through **//****
Summary of Fees and Costs**

Total Fees	\$*****
Total Costs	<u>\$*****</u>
Total Charges	<u>\$*****</u>

EXHIBIT A
Page 1

[LAW FIRM]
[Address]
[Telephone Number]
[Date]

Stephen M. Fischer
Interim City Attorney
Office of the City Attorney
City of Oxnard
300 W. Third Street, Suite 300
Oxnard, CA 93030

Invoice No.

Client/Matter No:
Re:

For Professional Services Rendered Through **/**/****

Fees

<u>Date of Service</u>	<u>Person Performing Service</u>	<u>Description of Service</u>	<u>Time Spent in 1/10s of an hour Increments</u>	<u>Amount of Fees</u>
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Costs

<u>Date Cost Incurred</u>	<u>Description of Cost Item</u>	<u>Amount of Cost</u>
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Additional Information

FY to Date Fees (7/1/___ to 6/30/___)	\$ _____
FY to Date Costs (7/1/___ to 6/30/___)	\$ _____
Case to Date Fees	\$ _____
Case to Date Costs	\$ _____

EXHIBIT A
Page 2

Privileged and Confidential – Do not store with publicly accessible documents

EXHIBIT A

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED ----- DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Oxnard, its City Council, officers, employees, agents and volunteers

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your work, operations or premises owned by or rented to you.

Insurance is primary and non-contributory.

REQUEST FOR BUDGET APPROPRIATION

Department: City Attorney
Project/Program _____
Manager: Stephen Fischer

Date: April 14, 2015
Phone: x7483

Reason for Appropriation:

To fund contract covering duties performed by Human Resources Management staff including recruitment under Agreement No. 7012-15-CA from General Fund Operating Reserve

Accounts and Descriptions

AMOUNT

Fund: **GENERAL FUND (101)**

Expenditures/Transfers Out

HUMAN RESOURCES (1701)

101-1701-801.82-09 CONTRACTS & SERVICES / SVCS-OTHER PROF/CONTRACT 240,000

Sub-total Expenditures 240,000

Net Change to Fund Balance (240,000)

Approvals

Department Director

Chief Financial Officer

City Manager

ATTACHMENT NO. 2
PAGE 2 OF 2

REQUIRES CITY COUNCIL AUTHORIZATION

BA# (Finance Use Only) _____
BA Doc# (Finance Use Only) _____
Revised : 2/23/2012