

**AGREEMENT
FOR PROFESSIONAL LEGAL SERVICES
CITY ATTORNEY**

Feb 13, 2017 **THIS AMENDED AND RESTATED AGREEMENT** is made and effective as of between the City of Upland, a Municipal Corporation ("City") and RICHARDS, WATSON & GERSHON, A Professional Corporation, with a place of business at 1 Civic Center Circle, Brea, CA, hereinafter also referred to as ("Attorneys)."

RECITALS

WHEREAS, the City desires to continue to contract with RICHARDS, WATSON & GERSHON, s to provide legal services to City; and

WHEREAS, RICHARDS, WATSON & GERSHON, herein selected are in the general practice of law with extensive municipal experience, including that of City's legal counsel for twenty-two years and are fully able to carry out the duties involved herein;

AGREEMENT

Now, therefore, in consideration of the mutual terms and conditions set forth herein, it is agreed as follows:

1. **APPOINTMENT OF AMENDED AND RESTATEMENT OF CITY ATTORNEY**

A. JAMES L. MARKMAN shall serve as City Attorney of the City of Upland. Both the City Attorney and all other Attorneys, providing services hereunder shall, at all times hereunder and at their sole cost and expense, be fully qualified and licensed to practice law in the State of California and before all appropriate Federal courts and other bodies and tribunals.

2. **SCOPE OF WORK**

A. RICHARDS, WATSON & GERSHON, agree to perform all necessary legal services of the office, including, but not limited to, the following legal services which shall be designated "Basic Services" hereunder, and shall include provision of such other personnel as shall be necessary to perform all services under this Agreement, as follows:

- (i) Attend all regularly scheduled City Council action meeting and Planning Commission meetings.
- (ii) Attend occasional meetings at City Hall as required by the Mayor or City Manager and be available for staff meetings at City Hall during afternoons prior to City Council action meetings.
- (iii) Advise City Council, appointed Commissions and Boards, City staff, and other City officials on all legal matters pertaining to City business.
- (iv) Prepare, review and approve as to form, contracts, agreements, resolutions, ordinances and all other standard City documents.
- (v) Prepare such written and oral legal opinions as shall, from time to time, be required by the City.
- (vi) Perform such other routine legal services as are required from time to time by the Mayor or City Manager.

3. SCOPE OF - SPECIAL SERVICES AND SELF-INSURANCE

A. In addition to the Basic Services set forth in paragraph 2, the City Attorney shall provide legal services under this paragraph 3 characterized as Special Services. These services shall be comprised of such special legal matters, not included in paragraph 2, that are of a more than routine and of a time-consuming nature relating to, among other things, administrative hearings, preparation and handling of lawsuits, court appearances, code enforcement and special legal projects. It is understood and agreed that no substantial time for Special Projects shall be undertaken by City Attorney without prior approval of the City Manager.

B. The City specifically reserves the right to retain, at its sole options, other legal counsel for litigation and other specialized legal matters including, but not limited to, the activities of the Successor Agency to the Upland Redevelopment Agency, cable television, solid and hazardous waste, tort litigation, water related matters, and workers' compensation. The City Manager will supervise outside legal counsel. This reservation of rights does not preclude the City or the Successor Agency from assigning these matters to RICHARDS, WATSON & GERSHON as part of the scope of duties under this Section 2 or requesting recommendations concerning the selection of outside legal counsel.

4. COORDINATION AND ORGANIZATION

A. JAMES L. MARKMAN shall be City Attorney and shareholder-in-charge under this Agreement. The shareholder-in-charge will process, coordinate and direct as necessary all legal services hereunder in order to maximize the timeliness and usefulness of the delivery of such services. The shareholder-in-charge shall be available, at all reasonable times, to the Mayor and City Council, the City Manager and persons designated by him, in relationship to all legal services to be furnished by City Attorney hereunder. The shareholder-in-charge shall also direct and coordinate all internal activities to the end that output from the City Attorney to City shall be fully compensated, consistent and timely.

5. COMPENSATION

A. The first eighty (80) hours of work performed hereunder for Basic Services, regardless of which firm attorney performs those services, shall be compensated at the rate of \$190.00 per hour. The first eighty (80) hours each month shall be calculated by adding together all time expended by RICHARDS, WATSON & GERSHON, in attending Council meetings and Planning Commission meetings and, if necessary, adding thereto the first hours of service delivered during that month, other than on litigation, on a chronological basis.

B. RICHARDS, WATSON & GERSHON, shall be compensated for all other work on Basic Services as follows:

- (i.) At the rate of \$215.00 per hour for work performed by James L. Markman and at the rate of \$190.00 per hour for other shareholders and senior associates and contract employees (those with at least fifteen (15) years' experience as licensed RICHARDS, WATSON & GERSHON,);
- (ii) At the rate of \$175.00 per hour for other firm associates;
- (iii) At the rate of \$125.00 per hour for firm paralegals;
- (iv) At the rate of \$100 per hour for firm clerks;
- (v) For public finance work, RICHARDS, WATSON & GERSHON, shall be compensated at the standard hourly rate, subject to reasonable limit on total fees charged on a financing as established by the City Manager;

- (vi) Litigation services, other than tort defense or eminent domain, will be charged at a discount of 20% from RICHARDS,WATSON & GERSHON, then current posted hourly rates subject to approval of the City Manager on a case-by-case basis; and
- (vii) RICHARDS,WATSON & GERSHON, shall be reimbursed for out-of-pocket expenses incident to services performed in addition to other payment for herein, such out-of-pocket expenses to include long-distance telephone charges, extraordinary reproduction costs and non-automobile travel expenses in the event RICHARDS,WATSON & GERSHON, are required to travel other than in the Los Angeles and Orange County areas on behalf of Agency.

C. Monthly Statements

- (i) It is understood that the RICHARDS,WATSON & GERSHON, shall submit fully itemized statements of all invoices monthly for services performed.

D. Payment.

- (i) Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month.
- (ii) Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of consultant's fees it shall give written notice to RICHARDS,WATSON & GERSHON, within 30 days of receipt of a invoice of any disputed fees set forth on the invoice.
- (iii) RICHARDS,WATSON & GERSHON, shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. RICHARDS,WATSON & GERSHON, shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

E. Litigation Expenses.

- (i) RICHARDS,WATSON & GERSHON, shall be reimbursed for direct out-of-pocket expenses actually and necessarily incurred in the course of providing legal services under the Agreement in preparation for and maintaining the prosecution or defense of litigation, including without limitation: court costs, jury fees, services costs, witness fees, depositions costs reporters' fees, title reports, photographs, diagrams, maps, and similar expenses.
- (ii) Generally, no more than one attorney's time should be billed for depositions, hearings, motions, case meetings (including intra-firm meetings), etc., unless approved by City Council. It is

expected that counsel will appropriately apportion court time (including travel costs) to each case in which counsel is appearing in court if one or more matter is handled. Legal research for a particular issue that is over five hours requires pre-approval. When billing for legal research, the entry must reflect a description of the topic researched and its relevances to the efforts. A copy of the research memo shall be sent to the City.

6. **PROHIBITION AGAINST SUBCONTRACTING DELEGATING OR ASSIGNMENT**

A. RICHARDS,WATSON & GERSHON, shall not contract with or delegate to any individual or other entity to perform on the City;s behalf, in whole or in part, any of the services required under this Agreement without the prior express approval of the City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior express approval of the City.

7. **CONFLICT OF INTEREST**

A. RICHARDS,WATSON & GERSHON, shall at all times avoid conflicts of interest in the performance of this Agreement. In the event that a conflict arises, RICHARDS,WATSON & GERSHON, shall immediately notify City. Within thirty (30) days following execution of this Agreement, RICHARDS,WATSON & GERSHON, shall file a conflict of interest disclosure statement setting forth any information related to potential conflicts of interest to the extent such disclosure is required by law, including City's adopted conflict of interest code.

8. **INDEPENDENT CONTRACTOR**

A. RICHARDS,WATSON & GERSHON shall perform all services required under this Agreement as an independent contractor of the City, and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. RICHARDS,WATSON & GERSHON, shall not at any time or in any manner represent that it or any of its employees or agents are City employees.

B. **PERS Eligibility Indemnification:** In the event that Attorney or any employee, agent, or subcontractor of RICHARDS,WATSON & GERSHON providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, RICHARDS,WATSON & GERSHON shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of RICHARDS,WATSON & GERSHON or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, RICHARDS,WATSON & GERSHON and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

9. **DISPUTE RESOLUTION**

A. If any dispute or disagreement arises between the City and Richard, Watson & Gershon as to any matter relating to this Agreement, including but not limited to the scope of services, the performance of the respective responsibilities of the City and Richard, Watson & Gershon, the quality of services rendered and the billing of such services, the City and Richard, Watson, & Gershon agree to confer and attempt to resolve the matter informally. If the parties cannot agree, they agree that they will refer the dispute for resolution to mediation to the fullest extent permitted by law. The parties are aware that mediation is a voluntary process and pledge to cooperate fully and fairly with the mediator in an attempt to reach a mutually satisfactory compromise of any dispute or disagreement. The mediator shall be chosen by mutual agreement of the parties, and mediation shall commence within thirty (30) days of either party's written request to the other for mediation. Any agreement reached by the mediation shall be reduced to writing, be signed by the parties and be binding on them. This provision for mediation is an effort to protect, preserve, and respect the requisites of a productive attorney-client relationship, but shall be without prejudice to either party pursuing its other lawful remedies.

10. **RECORDS AND REPORTS**

A. **Records.** RICHARDS, WATSON & GERSHON, shall keep such books and records as shall be necessary to perform the services required by this Agreement and to enable the City to evaluate the performance of the required services. The City shall have full and free access to such books and records that deal specifically with the services performed by Richard, Watson & Gershon for the City at all reasonable times, including the right to inspect, copy, audit, and make summaries and transcripts from such records.

B. **Ownership of Documents.** All reports, records, documents and other materials prepared by RICHARDS, WATSON & GERSHON, its employees and agents in the performance of this agreement shall be the property of the City and shall be delivered to the City upon request by the City or upon termination of this Agreement. RICHARDS, WATSON & GERSHON, shall have no claim for further or additional compensation as a result of the exercise by the City of its full rights of ownership of the documents and material hereunder. RICHARDS, WATSON & GERSHON, may retain copies of such documents for its own use.

C. **Release of Documents.** No report, record, document, or other material prepared by Richard, Watson, & Gershon in the performance of services under this Agreement shall be released publicly without prior written approval of the City, except as may be required by law.

11. **INDEMNIFICATION.**

A. The Attorneys agree to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

B. In the event any claim or action is brought against City relating to RICHARDS,WATSON & GERSHON's performance or services rendered under this Agreement, RICHARDS,WATSON & GERSHON shall render any reasonable assistance and cooperation which City might require.

12. **INSURANCE REQUIREMENTS.**

- A. RICHARDS,WATSON & GERSHON shall procure and maintain the minimum scope of Insurance, at its cost:
- (i) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.
 - (ii) Insurance Services Office Business Auto Coverage form CA 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - (iii) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.
 - (iv) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.
 - (v) Minimum Limits of Insurance. Consultant shall maintain limits no less than:
 - (a) General Liability: One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 - (b) Automobile Liability: One million dollars (\$1,000,000) per accident for bodily injury and property damage.
 - (c) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.
 - (d) Professional Liability coverage: Two million (\$2,000,000) per claim and in aggregate.

B. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or RICHARDS,WATSON & GERSHON shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (i) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
- (ii) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- (iv) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- (vi) Additional Insured – All policies, except for Worker's Compensation and Professional Liability policies, shall contain endorsements naming the City of Upland and their officers, employees, agents, and volunteers as additional insured parties with respect to liabilities arising out to the performance of Work hereunder. The additional insured endorsements shall also be primary and non-contributory.
- (vii) Waiver of Subrogation Rights - RICHARDS,WATSON & GERSHON shall require the carriers of Commercial General Liability, Automobile Liability and Worker's Compensation to waive all rights of subrogation against the City of Upland, and its officers, employees, agents and volunteers. Such insurance coverage provided shall not prohibit CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. RICHARDS,WATSON & GERSHON hereby waives all rights of subrogation against the City of Upland.

D. Acceptability of insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VIII, and admitted and licensed to do business in the

State of California, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

E. Verification of coverage. RICHARDS,WATSON & GERSHON shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Attorney's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

13. **LEGAL RESPONSIBILITIES.** RICHARDS,WATSON & GERSHON shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. RICHARDS,WATSON & GERSHON is responsible for compliance with the Patient Protection and Affordable Care Act (2010), and City shall not be obligated to provide any health care coverage to Attorneys. RICHARDS,WATSON & GERSHON shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Attorneys to comply with this section.

14. **NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Upland
Mailing Address:
460 N. Euclid Avenue
Upland, California 91785
Attention: City Manager

To Consultant: RW&G
Mailing Address:
1 Civic Center Circle
Brea, CA

15. **NONDISCRIMINATION.** RICHARDS,WATSON & GERSHON pledges there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, secular orientation, national origin, or ancestry in the performance of services under this Agreement.

16. **TERMINATION.**

Notwithstanding any other provisions of this Agreement, the City reserves the right to terminate this Agreement upon ninety (90) days' written notice from City Council to City Attorney and all further obligations to pay RICHARDS,WATSON & GERSHON, for services rendered hereunder shall thereupon cease, except the City shall be obliged to pay for all costs and expenditures lawfully incurred by RICHARDS,WATSON & GERSHON, prior to the effective date of such termination. It is further agreed that Attorney reserves the right to terminate this Agreement by giving ninety (90)

days' written notice to City. In the event of termination of this Agreement by either party, RICHARDS, WATSON & GERSHON, will cooperate with the City in transferring the files and assignments to the City Clerk for file, in the interim of hiring another City Attorney and will be compensated at the hourly rates set forth in paragraph 5 of this Agreement, should he be called upon to perform any services after the effective date of terminations, including the transfer of files and assignments.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CITY OF UPLAND



Martin Thouvenell, Interim City Manager

CONSULTANT

RICHARDS, WATSON & GERSHON
A Professional Corporation of the State of California

By: 
Name: JAMES L. MARKMAN
Title: VICE PRESIDENT

By: _____
Name: _____
Title: _____

Attest:



Jeannette Vagnozzi, City Clerk