

Lorrie -

can you please
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copy & return the
other 2 to me.

Thanks
Linda

12-14-04
Done!
S.

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December 1, 2004

Via U.S. Mail

Les Murad
Assistant City Attorney
City Attorney's Office
City of Redlands
35 Cajon Street
Redlands, CA 92373

Re: City of Banning, et al. v. James Jones Company, et al., Case No.
BC321513 (Los Angeles Superior Court)

Dear Mr. Murad:

Enclosed please find three fully-executed, original retainer agreements between the City of Redlands, Phillips & Cohen LLP and Irell & Manella LLP regarding our representation of the City in the above-referenced matter.

As you will see, we have made the following hand-written revision to numbered paragraph 1 of the agreement: we have removed "Tyco International (US) Inc." from the list of defendants against whom the lawsuit is to be filed. Unfortunately, Tyco's name had been included inadvertently. James Jones Company, Watts Industries, Inc. and Mueller Co. are the only defendants named in the above action.

Once you have reviewed and hopefully approved this hand-written revision, please place your initials and the date beside it to indicate your approval thereof, keep two original agreements for your files, and return the remaining original to me at the address provided above.

RETAINER AGREEMENT

ORIGINAL

This Retainer Agreement represents the understanding and agreement between the City of Redlands ("City"), Phillips & Cohen ("P&C"), and Irell & Manaster ("I&M").

Retention of P&C and I&M

1. City hereby retains P&C and I&M to represent it in an action to be filed against James Jones Company, ~~Tyco International (US) Inc.~~ Mueller Co., and Watts Industries, Inc. (collectively, "Defendants") regarding fraud committed against over one hundred California public water systems, including City (the "Lawsuit"). The Lawsuit is based on the same facts as the pending action in Los Angeles Superior Court, State of California ex rel. Nora Armenta v. James Jones Company et al., Case No. BC 173487 (the "Armenta Action"), in which City is a real party in interest. P&C and I&M also represent qui tam plaintiff/relator Nora Armenta ("Armenta"), and real parties in interest Alameda County Water District ("ACWD"), City of Pomona ("Pomona"), City of Burbank ("Burbank"), City of Vallejo ("Vallejo"), City of Santa Cruz ("Santa Cruz"), and the Contra Costa Water District ("CCWD") (collectively, the "Other Clients"), and have separate retainer agreements with each of them.

2. City hereby authorizes P&C and I&M to associate or consult in this representation with such other counsel as they may deem necessary. Notwithstanding any such association of other counsel, and unless such authority is expressly delegated by P&C and I&M to other counsel with the consent of City, P&C and I&M shall at all times retain the full authority and responsibility of counsel in any litigation pursuant to this Retainer Agreement. Unless otherwise agreed to by City, P&C and I&M in writing, P&C and I&M shall be responsible for compensating any counsel with whom P&C and I&M associate or consult.

Scope of Employment

3. City understands that the Lawsuit will be filed to enforce common law claims by City as well as numerous other California public water systems. City understands that the representation presently undertaken by P&C and I&M is limited to matters necessary to bring the Lawsuit to a conclusion before the trial court. The representation currently includes pursuit of claims on behalf of the Other Clients, and may, in the future, include pursuit of California False Claims Act Claims and common law claims on behalf of other California public water systems.

4. City has been informed and understands that P&C and I&M do not represent it in connection with the negotiation of the terms of this Retainer Agreement. Rather, P&C and I&M are each acting on its own behalf and City is entitled and encouraged to review this Retainer Agreement with separate counsel.

5. In the absence of a written agreement to the contrary, P&C and I&M do not represent City in any legal matter other than as set forth herein.

City's Obligations

6. Where appropriate, City, P&C and I&M will attempt to consult with one another before discussing the Lawsuit with the media or any other third party.

7. City agrees to provide promptly any and all information requested by P&C and I&M and to cooperate fully in the prosecution of the Lawsuit, including but not limited to, attending scheduled hearings and meetings, answering truthfully any interrogatories propounded by opposing parties, appearing for the taking of any deposition, and participating cooperatively in any judicial or other proceeding as may arise during the course of the Lawsuit.

8. While P&C and I&M will act as outside counsel for City in prosecuting its claims in the Lawsuit as provided in this Retainer Agreement, the City Attorney of the City of Redlands ("City Attorney") shall at all times remain City's general legal advisor. The City Attorney shall have responsibility for facilitating access of P&C and I&M to City's personnel and records in connection with the Lawsuit. As between P&C and I&M, on the one hand, and the City Attorney on the other, the City Attorney shall have primary responsibility for informing, advising and consulting with its City Council or other governing body with respect to the Lawsuit, including without limitation issues relating to its settlement.

Attorneys' Fees, Costs and Expenses

9. City understands that, as a political subdivision that did not intervene in the Armenta Action, City is required under the California False Claims Act to provide to Armenta – as the qui tam plaintiff – at least 25% but not more than 50% of the money recovered by City from Defendants under the California False Claims Act in the Armenta Action. City also understands that it has no legal obligation to share with Armenta any of the money it recovers from Defendants under its common law claims. City nevertheless agrees to share any common law recovery with Armenta in order to minimize the conflicts of interest that might otherwise arise between Armenta and City. Therefore, City, P&C, I&M, and Armenta understand and agree that City will pay to Armenta 33% of the full amount of any award or settlement City recovers from Defendants, or any of them, as a result of the Lawsuit ("the Relator's Share"). To compensate P&C and I&M for their services, City, P&C, and I&M understand and agree that, in addition to paying Armenta the Relator's Share, City will pay to P&C and I&M 5% of the full amount of any award or settlement City recovers from Defendants, or any of them (before payment of the Relator's Share) as a result of the Lawsuit ("the contingent fee").

10. City has been informed and understands that the above fees are not prescribed by law but are negotiable between attorney and client. City has also been informed and understands that Armenta has agreed to pay to I&M and P&C a percentage share of her portion of any recovery in the Lawsuit.

11. For as long as they remain counsel to City in the Lawsuit, P&C and I&M agree that they will advance all funds needed to pay for the following expenses incurred in connection with representing City in the Lawsuit: filing fees, faxing, postage, phone, routine photocopying, transcripts, court reporters and expert witness expenses as well as the costs involved in taking and defending depositions and preparing for and prosecuting City's claims at trial. The parties agree that all internal costs and expenses of the Lawsuit including without limitation photocopying expenses incurred by or on behalf of City in connection with responding to subpoenas and document requests, shall be advanced by City. To the extent that any costs and expenses advanced or incurred by P&C and I&M are later awarded to City by the court or recovered through settlement, City hereby assigns to P&C and I&M such award or settlement proceeds. Any reasonable costs and expenses associated with the Lawsuit that are incurred or advanced by P&C, I&M or by City, but that are not awarded by the court or recovered through settlement, shall be reimbursed to the party who incurred or advanced the expenses from City's recovery, if any, prior to the division and distribution of such recovery referred to in paragraph 9 above.

12. City shall not be obligated to pay or to guarantee payment of any compensation to P&C or I&M for services rendered or costs incurred in the Lawsuit other than as set forth in this Retainer Agreement. If for any reason there is no recovery in the Lawsuit, City shall not be obligated to pay for or reimburse to P&C or I&M any costs incurred in connection with the Lawsuit, except as provided in paragraph 11 above.

13. City agrees to cooperate fully in the prosecution of any claim by P&C and I&M for court awarded expenses, costs, or fees.

Termination of Representation

14. City may discharge P&C and/or I&M at any time by written notice to P&C and I&M. Upon termination (or otherwise), City retains the right to demand return of all of its client files, including confidential communications, provided, however, that P&C and I&M may keep a copy of and continue to use City's confidential information in their continuing representation of other parties in the Lawsuit.

15. If P&C and/or I&M determine at any time that it is no longer feasible or desirable to pursue the Lawsuit on behalf of City, P&C and/or I&M may, after providing thirty days written notice to City, withdraw from further representation, as

provided by law. In that event, the withdrawing firm shall be entitled to a portion of the contingent fee as provided by law. As provided in paragraph 22 below, in the event P&C and/or I&M terminate representation of City, P&C and I&M may keep a copy of and continue to use City's confidential information in their continuing representation of other parties in the Lawsuit.

16. City understands and agrees that in the event P&C and/or I&M is discharged and (i) City proceeds with the Lawsuit with or without substitute counsel; (ii) City receives a recovery from Defendants, and (iii) P&C and I&M are not entitled to their full 5% contingent fee as provided in paragraph 9, then City shall pay the discharged counsel on a quantum meruit basis. The parties agree that for purposes of this Retainer Agreement quantum meruit shall be measured as a portion of the 5% contingent fee described in paragraph 9 in proportion to the percentage of the hours expended by the discharged counsel compared with the hours expended by substitute counsel, if any (appropriately weighted based upon normal hourly rates). In addition, City understands and agrees that, if I&M and/or P&C is discharged, Armenta's right to share in any recovery obtained from Defendants shall not be affected, i.e., Armenta shall continue to receive 33% of the full amount of any award or settlement City recovers from Defendants as a result of the Lawsuit, including the California False Claims Act and common law claims, as provided in paragraph 9 hereto. City also understands and agrees that it will not object to the discharged counsel's continued representation of the Other Clients.

Waiver of Potential Conflicts Arising from Representation in Matters Unrelated to the Lawsuit

17. City hereby agrees that P&C and I&M, at any time, may represent existing or new clients in any matter (including without limitation any litigation, action, proceeding, transaction or negotiation) that is not substantially related to the Lawsuit, even if the interests of those clients are directly adverse or potentially directly adverse to City. City hereby expressly waives any conflict of interest that may hereafter arise in connection with such representation. By way of example, and without limiting the generality of the foregoing, City understands and agrees that I&M and P&C may in the future, represent existing or new clients with interests adverse to City in matters relating to City's distribution of water to its residents or relating to soil or ground water contamination from business operations, and City agrees that such actions, without more, are not substantially related to the Lawsuit.

18. Except as to information disclosed to other clients whom I&M and P&C represent in the Lawsuit, City's confidential information obtained in the course of the Lawsuit will remain confidential and will not be disclosed to any clients of I&M and P&C, other than those who are parties to the Lawsuit. In the event of such representation adverse to City, I&M and P&C, as appropriate, will establish appropriate procedures to make certain that no attorney or paralegal working on

such matter has access to any confidential information which City has provided to P&C and/or I&M.

Waiver of Conflicts Resulting From Joint Representation of City and Clients in Lawsuit

19. As noted above, P&C and I&M also represent the Other Clients in the Armenat Action and in the Lawsuit. P&C and I&M may, in the future, take on the representation of additional public water systems in the Lawsuit. The Other Clients (excluding Armenta) together with any other municipalities or public water systems whom P&C and I&M may represent in this Lawsuit in the future shall be referred to as the "Additional Municipal Clients."

20. City is aware that while multiple representation may result in economic or tactical advantages, it also involves significant risks. City understands that P&C and I&M's joint representation of City, Armenta, and the Additional Municipal Clients creates the potential for a conflict of interest to arise between or among them, or any of them, in the future. The potential for conflict exists for at least the following reasons: (i) because P&C and I&M are entitled to statutory attorneys' fees under the California False Claims Act for the prosecution of Armenta's claims but P&C and I&M are not entitled to statutory fees for the prosecution of the claims of City or any Additional Municipal Clients; and (ii) because City may wish to pursue a litigation strategy or tactic, including without limitation settling the Lawsuit, with which Armenta and/or one or more of the Additional Municipal Clients disagree or believe to be contrary to their/its interests. Conversely, Armenta and/or one or more of the Additional Municipal Clients may want to pursue a litigation strategy or tactic, including without limitation settling the Lawsuit, with which City disagrees or believes to be contrary to its interests. City hereby expressly waives any such conflicts of interest that may currently exist or hereafter arise between it on the one hand, and Relator and the Additional Municipal Clients, or any of them, on the other hand. P&C and I&M represent that they have informed the Other Clients of the potential for a conflict of interest arising from the joint representation and the Other Clients have each executed a formal, written conflict of interest waiver.

21. Should a conflict of any type develop in the course of the representation of the City by P&C and I&M in the Lawsuit (including without limitation those waived in paragraphs 17 and 20 above), P&C and I&M might reach the conclusion that they cannot continue to represent all of their then clients. City hereby agrees that, should P&C and I&M in their sole discretion reach such a conclusion, P&C and I&M may terminate their relationship with City pursuant to the terms of the Retainer Agreement and continue to represent one or more of their other clients in the Lawsuit, even though P&C and I&M would be in possession of City's confidential information and even though, as provided in this Retainer Agreement, City agrees that P&C and I&M may keep a copy of and use that confidential information in their continued representation of other clients in the

Lawsuit and those other clients may be adverse to City. City understands that in the event that P&C and I&M determine that a conflict does exist and that P&C and I&M could not continue to represent all of their then clients, P&C and I&M would continue to represent Armenta and one or more of their other clients rather than City. City hereby agrees that, in the event P&C and I&M terminate their representation of City and continue with representation of other clients, City will not assert any conflict of interest (such conflicts having been expressly waived herein) and will not seek to disqualify P&C and/or I&M from representing Armenta and/or any Additional Municipal Clients notwithstanding any conflict or adversity that may develop. City further understands that, even with thirty days written notice, the termination of P&C and I&M's representation of City, as provided by law, could come at an inopportune time (even at trial). In the event P&C and I&M terminate their representation of City, they agree to take reasonable steps to reduce any hardship or prejudice to City, including supporting reasonable requests for extensions or reasonable delay of trial in order to allow City an opportunity to obtain replacement counsel.

22. City hereby agrees that in the event that P&C and I&M terminate their representation of City, P&C and I&M shall be entitled to keep a copy of and use City's confidential information in their continued representation of other clients in the Lawsuit. Further, City hereby agrees that P&C and I&M at any time may share City's confidential communications with Relator and the Additional Municipal Clients whom P&C and I&M are jointly representing in this matter (even if P&C and I&M are no longer representing City).

23. Furthermore, because P&C and I&M will be jointly retained by both City and the other clients in this Lawsuit, in the event of a dispute between City on the one hand and Relator and the Additional Municipal Clients, or any of them, on the other hand, the attorney-client privilege generally will not shield City's communications with P&C and I&M from discovery by the other parties whom P&C and I&M are jointly representing.

24. Conflict waivers are always serious matters and always have potential downsides to the waiving party. In this case, the City's waivers may result, for example, in P&C and I&M being adverse to City while in the possession of confidential or other information which City has provided. In addition, it is possible in accordance with these waivers that P&C and I&M would be simultaneously representing City and parties adverse to City and that this may cause City to lose confidence in P&C and I&M at an inopportune moment when it would be disadvantageous to City to discharge P&C and I&M. The waivers set forth in paragraphs 17-23 above are particularly critical to City's rights and interests. For this reason, and because of the importance and complexity of conflict waivers generally, P&C and I&M strongly recommend that City consult with independent

counsel prior to executing the Retainer Agreement so that City may independently be advised of its rights and needs.

Arbitration

25. IN THE EVENT OF A DISPUTE BETWEEN OR AMONG THE PARTIES HERETO REGARDING FEES, COSTS, OR ANY OTHER MATTER RELATED TO OR ARISING OUT OF THIS RETAINER AGREEMENT, THE LAWSUIT, OR THE ENGAGEMENT BY CITY OF THE ATTORNEYS HEREIN, INCLUDING WITHOUT LIMITATION THE QUALITY OF THE SERVICES RENDERED, THE DISPUTE SHALL BE DETERMINED, SETTLED AND RESOLVED BY ARBITRATION IN CALIFORNIA. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PARTIES EXPRESSLY AGREE THAT ANY AND ALL QUESTIONS AS TO WHETHER OR NOT AN ISSUE CONSTITUTES A DISPUTE OR OTHER MATTER ARBITRABLE UNDER THIS PARAGRAPH 25 SHALL THEMSELVES BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THIS PARAGRAPH 25. ANY AWARD SHALL BE FINAL, BINDING AND CONCLUSIVE UPON THE PARTIES, AND A JUDGMENT RENDERED THEREON MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PREVAILING PARTY IN ANY SUCH ARBITRATION SHALL BE ENTITLED TO REASONABLE ATTORNEYS' FEES AND COSTS.

Arbitration may be demanded by the sending of written notice to the other party or parties. If arbitration is demanded, within twenty (20) days of the demand City shall present a list of five (5) qualified individuals who would be willing to serve that City would find acceptable to act as arbitrator. To serve as arbitrator, the individual must be a retired judge having served on any federal court or the California Superior Court or higher court in the State of California. Within twenty (20) days of P&C and I&M receiving City's list, P&C and I&M may at their sole discretion (i) select any individual from that list and that individual shall serve as the arbitrator, or (ii) propose their own list of five (5) individuals for arbitrator. If P&C and I&M choose to present a separate list, City may within twenty (20) days select any individual from that list and that person shall serve as arbitrator. If no arbitrator can be agreed upon at the end of this process, City on the one hand and P&C and I&M on the other hand shall select one individual from their own respective list and those two persons shall jointly select the arbitrator. The arbitration shall be conducted pursuant to the procedures set forth in the California Code of Civil Procedure §§ 1280, et seq., and in that connection City, P&C and I&M agree that Section 1283.05 thereof is applicable to any such arbitration. Unless inconsistent with California Code of Civil Procedure §§ 1280, et seq. (in

which case §§ 1280, et seq. shall prevail), the arbitration will be conducted by the American Arbitration Association pursuant to its then current rules.

Miscellaneous

26. The entire agreement between City, P&C and I&M relating to the subject matter of this Retainer Agreement is contained herein. No promises, inducements, or considerations have been offered, accepted or given except as herein set forth. This Retainer Agreement supersedes any prior oral or written agreement concerning the subject matter of this Retainer Agreement.

27. This Retainer Agreement may not be modified, changed, altered or amended in any way except in a writing signed by all parties. The parties expressly agree that no oral modification of this Retainer Agreement shall be effective, notwithstanding any provisions of the governing law that may allow for oral modification.

28. The parties hereby acknowledge that they have read and understand the foregoing, that they have had the opportunity to consult with independent counsel, and that they agree to the representation on the terms set forth in this Retainer Agreement.

(29) THIS AGREEMENT CONSISTS OF TWENTY-NINE (29) PARAGRAPHS (INCLUDING THIS ONE) SET FORTH IN NINE (9) PAGES. PARAGRAPH 25 CONTAINS AN AGREEMENT TO ARBITRATE AND THUS WAIVES RIGHTS TO COURT PROCEEDINGS AND JURY TRIAL.

Dated: 11/8/04

By: Mary A. J. Phillips & Cohen
PHILLIPS & COHEN

Dated: 11/12/04

By: IRELL & MANELLA LLP
IRELL & MANELLA LLP

AGREED; CONFLICTS WAIVED AS PROVIDED ABOVE:

Dated: September 21, 2004

By: Susan Pepler
SUSAN PEPPLER, MAYOR
CITY OF REDLANDS

Attest:

By: Lorrie Poyzer
LORRIE POYZER, CITY CLERK

BY SIGNING BELOW, I UNDERSTAND AND AGREE TO THE REALTOR'S SHARE PROVIDED IN PARAGGRAPH NINE (9).

Dated: 11/18/04

By: Nora Armenta
NORA ARMENTA