

**AGREEMENT BETWEEN DISENHOUSE & IVICEVIC, LLP
AND THE CITY OF REDLANDS FOR SPECIAL COUNSEL SERVICES**

This agreement for special counsel services ("Agreement") is entered into by and between the City of Redlands, hereinafter referred to as the "City," and the law firm of Disenhouse & Ivicevic, LLP, hereinafter referred to as "D&I" and deemed effective as of February 13, 2014 ("Effective Date"). City and D&I are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, from time to time, the City receives Government claims alleging liability on the City's part, and is subsequently served with actions to enforce such alleged liability; and

WHEREAS, D&I is familiar with and competent in defending public agencies against Government claims and D&I represents to the City that D&I attorneys are approved to represent and to defend the City as required by law for actions filed against the City;

NOW, THEREFORE, in consideration of the remuneration hereinafter set forth, D&I agrees to defend all claims or actions referred by the City, arising from alleged liability of the City, on the following terms and conditions:

AGREEMENT

1. D&I shall have the right to decline any action referred by the City. D&I shall determine that it has no conflict of interest prior to accepting any action assigned by the City. D&I shall not accept actions that may include causes of action against the City. It is understood that the contractual relationship of D&I to the City is that of an independent defense attorney.
2. Each action referred to D&I by the City shall be submitted with the understanding that professional fees shall be paid at the rate of the payment cycle shown on Exhibit A to this Agreement.
3. D&I shall work cooperatively with the City to resolve, in the best interests of the City, all claims and lawsuits filed against the City. D&I shall initiate contact with the City Attorney, or City Attorney's authorized designee, for the authority to recommend the settlement of any claim or any lawsuit assigned to it by the City to the Redlands City Council. D&I shall make available, upon request by the City, the attorney handling the action for which a settlement is proposed for the purpose of appearing at the City Council closed session to answer questions pertaining thereto, thus facilitating the City Council's decision on the matter.

4. D&I is subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, (the "Law"), and the laws and regulations promulgated subsequent thereto. D&I shall cooperate with the City in implementation of all relevant regulations promulgated under the Law.
5. The term of this Agreement shall commence on its Effective Date and shall continue until terminated as set forth herein. Any Party to this Agreement shall have the right to terminate this Agreement at any time by giving thirty (30) days prior written notice to the other Party. Should any Party to this Agreement choose to terminate this Agreement, D&I shall continue to provide legal services if so agreed to in writing by the City, and D&I shall be compensated there on the same terms and conditions as hereinbefore set forth, until the conclusion of such action for any matters previously referred to D&I (prior to the notice of termination).
6. Without limiting or diminishing D&I's obligation to indemnify or hold the City harmless, D&I shall procure and maintain or cause to be maintained at its sole cost and expenses, the following insurance coverages during the term of this Agreement.
 - A. Workers' Compensation: If D&I has employees as defined by the State of California, D&I shall maintain statutory Workers' Compensation Insurance as prescribed by the laws of the State of California. The policy shall include Employers' Liability, including Occupational Disease, with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the City.
 - B. Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage and employment practices liability, covering claims which may arise from or out of D&I's performance of its obligations hereunder. The policy shall name the City and its elected and appointed officials, their respective officers, employees, agents and representatives as additional insureds. The policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.
 - C. Vehicle Liability: If vehicles or mobile equipment are used in the performance of D&I's obligations under this Agreement, D&I shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an

amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. The Policy shall name the City and its elected and appointed officials, officers, employees, agents and representatives as additional insureds.

D. Professional Liability Insurance: D&I shall maintain Professional Liability Insurance providing coverage for D&I's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If D&I's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and D&I shall purchase at its sole expense either (i) an Extended Reporting Endorsement (also known as Tail Coverage); or (ii) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement, or (iii) demonstrate through Certificates of Insurance that D&I has maintained continuous coverage with the same or original insurer. Coverage provided under the above-referenced items will continue for a period of five (5) years beyond the termination of this Agreement.

E. General Insurance Provisions-All Lines

- i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an AM Best rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the City. If the City waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.
- ii. D&I's insurance carriers must declare their insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence, such deductibles and/or retentions shall have the prior written consent of the City before the commencement of services under this Agreement. Upon notifications of deductibles or self-insured retentions unacceptable to the City, and at the election of the City, D&I carriers shall either (i) reduce or eliminate such deductibles or self-insured retentions as respects this Agreement with the City, or (ii) procure a bond which guarantees payment of losses and related investigations, claims administration and defense costs and expenses.

- iii. D&I shall cause D&I's insurance carriers to furnish the City with either (i) a properly executed original Certificate of Insurance and certified original copies of Endorsements effecting coverage as required herein, and (ii) if requested to do so orally or in writing by the City, provide original certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificates and policies of insurance shall contain the covenant of the insurance carriers that thirty (30) days prior written notice shall be given to the City prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration or reduction in coverage, this Agreement shall terminate forthwith, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect.
- iv. It is understood and agreed to by the Parties and the insurance company that the Certificates of Insurance and policies shall so covenant and shall be construed as primary insurance, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- v. If this Agreement, including any extensions thereof, exceeds five (5) years, the City reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverages currently required herein, if, in the City's reasonable judgment, the amount or type of insurance carried by D&I has become inadequate.
- vi. D&I shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- vii. The insurance requirements contained in this Agreement may be met with programs of self-insurance acceptable to the City.
- viii. D&I agrees to notify the City of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

7. **Hold Harmless/Indemnification:** D&I shall defend, indemnify and hold harmless the City, its elected and appointed officials, officers, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of D&I, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death, or any other element of any kind or nature whatsoever, arising from the performance of D&I, its officers, agents, employees, subcontractors, agents or representatives under this Agreement.

With respect to any action or claim subject to indemnification herein by D&I, D&I shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle or compromise any such action or claim without the prior consent of the City; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes D&I's indemnification to the City as set forth herein. D&I's obligation hereunder shall be satisfied when D&I has provided to the City the appropriate form of dismissal relieving the City from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limited or circumscribe D&I's obligations to indemnify and hold harmless the City herein from third party claims. In the event there is conflict between this Section 7 and California Civil Code Section 2782, this Section 7 shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve D&I from indemnifying the City to the fullest extent allowed by law.

8. All notices shall be given in writing by personal delivery or by mail. Notices sent by mail shall be addressed as follows:

City: City Attorney
City of Redlands
Post Office Box 3005
Redlands, California 92373

D&I: Disenhouse & Ivcevic, LLP
3890 Eleventh Street, Suite 217
Riverside, California 92501

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to who notices and payments are to be given by giving notice pursuant to this section.

9. This Agreement, including the Exhibit incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal

agreements relating to such matters are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by City and signed by City and D&I.

10. In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorney's fees, including fees for use of in-house counsel by a Party.

DISENHOUSE & IVICEVIC, LLP

By: Bruce E. Disenhouse
Bruce E. Disenhouse, Partner

CITY OF REDLANDS

By: Pete Aguilar
Pete Aguilar, Mayor

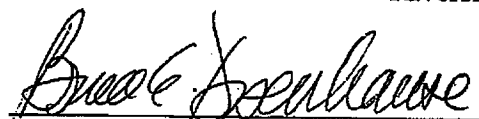
Attest:

Sam Irwin
Sam Irwin, City Clerk

EXHIBIT A

For use with the Agreement for Professional Services

1. Professional Services ☒ General Liability
2. Hourly Rate \$165 Hourly for Partner
 \$155 Hourly for Senior Associate
3. Billing Cycle ☐ Quarterly
 ☒ Monthly
4. Effective Date February 13, 2014.
5. Contact is for ☒ Single case assignment
6. Firm Name DISENHOUSE & IVICEVIC, LLP
 3890 Eleventh Street, Suite 217
 Riverside, California 92501


Attorney Signature

3/26/14
Date

Bruce E. Disenhouse
Print Name