

Office of the
City Attorney
City of Redlands

Daniel J. McHugh
City Attorney
Michael Reiter
Assistant City Attorney

MEMORANDUM

TO: CITY CLERK

FROM: CITY ATTORNEY

DATE: April 5, 2010

RE: CITY ATTORNEY OFFICE CONSULTANT CONTRACTS

Sam: Attached are copies of eight contracts between the City Attorney's Office and various consultants for carrying out litigation related matters. All of these contracts are "in effect," but not all consultants are presently being used. Although your office may already have copies of some or all of these contracts, we wanted to resend them to you in one package in the event you wanted to establish a special file for City Attorney Office contracts.

The reason for maintaining these contracts in a separate file is contained in section 2.15.020 of the City's Municipal Code. That section provides that the City Attorney may enter into professional services contracts for the retention of special legal counsel and various consultants without the prior approval of the City Council. These contracts need only be executed by a member of the City Council, and are then required to be filed and maintained in the office of the City Clerk.

As new contracts are entered in the future, we will continue to forward copies to you.
Thanks.

DANIEL J. MCHUGH

DJM:sas
enclosures

cc: N. Enrique Martinez

LEGAL SERVICES AGREEMENT

1. **IDENTIFICATION OF PARTIES.** This agreement, executed in duplicate with each party receiving an executed original, is made between Miller Axline & Sawyer, a Professional Corporation, and the City of Redlands, hereafter referred to as "Client" or "Redlands." This agreement is required by Business and Professions Code section 6147, and is intended to fulfill the requirements of that section.

2. **RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEY.** Client is retaining a law firm, not any particular attorney, and attorney services to be provided to Client will not necessarily be performed by any particular attorney. It is anticipated, however, that the services will be performed principally by Duane C. Miller and Michael Axline, the senior members of Miller, Axline & Sawyer.

3. **AUTHORIZED REPRESENTATIVE OF CLIENT.** Client designates Dan McHugh as the authorized representative to direct Attorney and to be the primary individual to communicate with Attorney regarding the subject matter of Attorney's representation of Client under this agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty, but not to preclude communication between Attorney and other representatives of Client.

4. **LEGAL SERVICES TO BE PROVIDED.** The legal services to be provided by Attorney to Client are representation of Client with respect to litigation to recover damages caused by 1,2-dibromo-3-chloropropane (DBCP), 1,2,3-trichloropropane (TCP) and 1,2-dichloropropane (DCP).

5. **LEGAL SERVICES SPECIFICALLY EXCLUDED.** It is the intent of the

parties that Attorney will represent the Client in a civil action for damages in the Superior Court of California and/or the United States District Court as well as in any proceeding by writ or appeal related to that action. Legal services that are not to be provided by Attorney under this agreement specifically include, but are not limited to, the following:

(a) Proceedings before any administrative or governmental agency, department or board including the California Department of Water Resources, California Department of Health - Division of Toxic Substances Control (DTSC), any Regional Water Quality Control Board and/or the California Water Quality Control Board. However, with the Client's permission Attorney may elect to appear at such administrative proceedings to protect the Client's rights in this litigation.

(b) Defending any legal action against the Client commenced by any person with the exception of any cross complaints filed in the action described in Paragraph 4.

(c) Defending any claim against the Client for unreasonable use of water and/or waste of water.

(d) Defending any action concerning water rights.

If Client wishes to retain Attorney to provide any legal services for additional compensation not provided under this agreement, a separate written agreement between Attorney and Client will be required.

6. RESPONSIBILITIES OF ATTORNEY AND CLIENT. Attorney will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Attorney and keep Attorney reasonably informed of developments.

A status report shall be presented to Client within sixty (60) days of the date of this agreement and thereafter as events reasonably warrant further reporting or at the further request of said Client.

7. **COOPERATION WITH CITY OF REDLANDS' CITY ATTORNEY'S OFFICE.** Attorney shall have sole responsibility for the prosecution and conduct of the litigation. City Attorney for the City of Redlands may appear on pleadings in the litigation in order to receive copies of pleadings and documents served in the case and to allow City Attorney to advise Client on the progress of the litigation and as the City Attorney and the Client deem necessary and appropriate. The City Attorney shall have no responsibility for the prosecution and conduct of the litigation

8. **ATTORNEY'S FEES.** The amount Attorney will receive for Attorney's fees for the legal services to be provided under this agreement will consist of a contingent fee.

A. **The Contingent Fee.**

The Attorney will receive the following contingent fee from any judgment, settlement, or recovery:

(i) Twenty-seven percent (27%) of the gross recovery if the recovery is obtained before the commencement of expert discovery; and

(ii) Thirty percent (30%) of the gross recovery if the recovery is obtained after the commencement of expert discovery.

B. **Definition of Gross Recovery.**

"Gross recovery" means the total amount received (whether by settlement, arbitration award, or court judgment) without reduction for "costs" as defined in paragraph 10 of

this agreement, except that the term "gross recovery" shall not include any court awarded costs or attorney's fees received by Client from any third party, except as otherwise provided in section 8.F below. The appropriate fee (27% or 30%) is multiplied by the gross recovery to calculate the contingent fee. The term "recovery" shall include, without limitation, the then present value of any monetary payments agreed to be made and the fair market value of any property and/or services agreed to be transferred or rendered for the benefit of Client by the adverse parties to the litigation or their insurance carrier(s).

C. Reasonable Fee if Contingent Fee Unenforceable.

In the event the contingent fee portion of this agreement is determined to be unenforceable for any reason or the Attorney is prevented from representing the Client on a contingent fee basis, the Client shall pay a reasonable fee for the services rendered. The parties shall use best efforts to negotiate a reasonable fee. If they cannot do so, the fee shall be determined by arbitration proceedings before the Judicial Arbitration and Mediation Services (JAMS). It is understood by the parties to this agreement that the time required to prosecute the action and the litigation costs incurred may require the Attorney to spend time and money on the case which is not compensated, if there is no recovery.

D. Non-Cash Recovery.

In the event the parties disagree with respect to the value of any recovery which is not in cash, they shall proceed as follows: Each party shall select an appraiser qualified to conduct an appraisal of the value of the recovery. Each party's selected appraiser shall then confer and select a third qualified appraiser. The third appraiser shall then appraise the value of the recovery. The third appraiser's valuation shall be final and binding on the parties.

With respect to payment of Attorney's fee on any non-cash recovery, Client shall make payment as follows: pay the full present value of the fee for such non-cash recovery simultaneously with payment of the Attorney's fee for any cash recovery.

E. Payment of Attorney's Fee on Deferred Recoveries.

If payment of all or any part of the amount to be received will be deferred (such as in the case of an annuity, a structured settlement, or periodic payments), the "total amount received," for purposes of calculating the attorney's fees, will be the initial lump-sum payment plus the present value, as of the time of the settlement, the final arbitration award, or final judgment, of the payments to be received thereafter. The attorney's fees will be paid out of the initial lump-sum payment. If the payment is insufficient to pay the attorney's fees in full, the balance will be paid from subsequent payments on the recovery before any distribution to Client.

F. Court-Awarded Attorney's Fees.

Client may obtain an award from the court of attorneys' fees and/or costs in the litigation. Attorney agrees to cooperate in the pursuit of any such award(s) by the court. Any attorney's fee awarded by the court in connection with the litigation shall not be considered part of the "total amount received" for purposes of calculating Attorney's contingent fee, and shall be applied as a credit against Client's obligation to pay Attorney's contingent fee under this Agreement; provided, however, that if the court-awarded fees exceed the fee to which Attorney would otherwise be entitled under this contingent fee agreement, Attorney's fee shall be the amount of the court-awarded fee. Any court-awarded costs shall also not be considered part of the "total amount received" for purposes of calculating Attorney's contingent fee.

G. Negotiated Fee.

Client is informed that this attorney's fee is not set by law but rather is negotiable between the Attorney and the Client.

9. DIVISION OF ATTORNEY'S FEES. Attorney may divide the attorney's fees received for the legal services provided under this agreement with another attorney or law firm retained as associate counsel. The terms of such additional division, if any, will be disclosed to the Client. Client is informed that, under the Rules of Professional Conduct of the State Bar of California, such a division may be made only with the Client's written consent after a full disclosure to the Client in writing that a division of fees will be made and of the terms of such division.

A decision by Attorney to retain associate counsel shall be subject to Client's approval, which shall not be unreasonably withheld.

10. COSTS.

(a) The Attorney will advance the costs incurred in connection with Attorney's representation of Client under this agreement. Costs will be advanced by Attorney and then paid by the Client from any recovery, whether by settlement or judgment. Attorney will periodically notify Client of costs advanced.

(b) Attorney will be reimbursed for any unreimbursed costs after any distribution of fees to Attorney and before any distribution to Client. If there is no recovery, or the recovery is insufficient to reimburse Attorney in full for costs advanced, Attorney will bear the loss for any costs not reimbursed under this paragraph.

(c) Costs include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, reasonable travel and hotel expenses, messenger

service fees, photocopying expenses, and process server fees. Items that are not to be considered costs, and that must be paid by Client without being either advanced or contributed to by Attorney, include, but are not limited to, Client's expense incurred in providing information to counsel or defendants, and damages claimed in the litigation and other parties' costs, if any, that Client is ultimately required to pay. If there is a recovery, the Client must reimburse the Attorney for the full amount of any unreimbursed costs provided that sum does not exceed the amount recovered by settlement(s), judgment(s), and/or other recovery.

11. REPRESENTATION OF ADVERSE INTERESTS. Client is informed that the Rules of Professional Conduct of the State Bar of California require the Client's informed written consent before an Attorney may begin or continue to represent the Client when the Attorney has or had a relationship with another party interested in the subject matter of the Attorney's proposed representation of the Client. Attorney is not aware of any relationship with any other party interested in the subject matter of Attorney's services for Client under this agreement. As long as Attorney's services for Client continue under this agreement, Attorney will not agree to provide legal services for any such party without Client's prior written consent. Attorney shall have the right to represent other municipalities, governmental agencies, or governmental subdivisions in other actions or similar litigation without the consent of Client, subject to the Rules of Professional Conduct relating to conflicts of interest.

Client has conferred with its Attorney, and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest which may occur as the result of Attorney's current and continuing representation of cities and other water suppliers in similar litigations.

12. **SETTLEMENT.** Attorney will not settle Client's claim without the approval of Client, who will have the absolute right to accept or reject any settlement. Attorney will notify Client promptly of the terms of any settlement offer received by Attorney.

13. **ORDER OR AGREEMENT FOR PAYMENT OF ATTORNEY'S FEES OR COSTS BY ANOTHER PARTY.** The court may order, or the parties to the dispute may agree, that another party will pay some or all of Client's attorney's fees, costs, or both. Any such order or agreement will not affect Client's obligation to pay attorney's fees and costs under this agreement. However, subject to Paragraph 8 (contingent fee), any such amounts actually received by Attorney will be credited against attorney's fees or costs, respectively, incurred by Client.

14. **DISCHARGE OF ATTORNEY.** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. If Attorney is Client's attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Attorney. In the event Attorney is discharged before the termination of the litigation, Client shall (1) reimburse Attorney for any and all costs advanced by Attorney not later than thirty (30) days of the receipt of a final cost accounting from Attorney, and (2) upon termination of the litigation, pay Attorney a fee consisting of the reasonable value of Attorney's services performed up to the point of the discharge.

15. **WITHDRAWAL OF ATTORNEY.** Attorney may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) if no court

action is filed, for good cause upon reasonable notice to Client. Good cause includes, but is not limited to, Client's breach of this Agreement, Client's refusal to cooperate with Attorney or to follow Attorney's advice on a material matter, or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical. Notwithstanding Attorney's withdrawal for cause, Client will remain obligated to pay Attorney out of the recovery a reasonable attorney's fee for all services provided, and to reimburse Attorney for all costs advanced before the withdrawal.

Attorney may terminate this agreement at any time, without cause, by giving to the Client not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination. Where Attorney terminates this agreement without cause, Attorney shall not be entitled to the recovery of any attorney fee, regardless of the status of the litigation, and regardless of whether or not any amounts of recovery have been or are subsequently received by Client. Upon termination without cause, Client shall immediately pay Attorney the amount of all unreimbursed costs and expenses incurred by Attorney under this Agreement, including any sums advanced by Attorney pursuant to Paragraph 10.A.

16. CONCLUSION OF SERVICES. When Attorney's services conclude, whether by completing the terms of this Agreement or by discharge (under Paragraph 15) or withdrawal (under paragraph 16), all unpaid charges will immediately become due and payable. Attorney is authorized to use any funds held in Attorney's trust account as a deposit against costs to apply to such unpaid charges.

17. LIEN. Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of Attorney's representation under this Agreement. Attorney's lien

will be for any sums owing to Attorney for any unpaid costs or fees at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

18. RELEASE OF CLIENT'S PAPERS AND PROPERTY. At the termination of services under this agreement, Attorney will release promptly to Client on request all of Client's papers and property. "Client's papers and property" include correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to Client's representation, whether Client has paid for them or not.

19. INDEPENDENT CONTRACTOR. The relationship to Client of Attorney, and any associate counsel or paralegal provided through Attorney, in the performance of services hereunder is that of independent contractor and not that of employee of the City of Redlands, and no other wording of this agreement shall stand in derogation of this subparagraph. The fees and expenses paid to Attorney hereunder shall be deemed revenues of his law office practice and not as a remuneration for individual employment apart from the business of his law office.

20. POLITICAL ACTIVITIES. Attorney will, during the term of this agreement, refrain from endorsing for office or representing any elected official of the City of Redlands, except for acts performed in the course of such person's official duty.

21. NOTICES. All written notice and communications to the Client relating to this agreement shall be mailed to or personally delivered to the City of Redlands, and written notices and communications to Attorney relating hereto shall be mailed to or personally delivered to Attorney at their offices addressed, Miller, Axline & Sawyer, 1050 Fulton Avenue, Suite 100, Sacramento, California 95825, unless and until Attorney shall have given written notice to the

City of Redlands of such change in such office address.

22. CONFIDENTIALITY. This agreement establishes the relation of attorney-client between the parties hereto. This agreement is an attorney-client communication and shall not be disclosed to any third party. Attorney is to hold all money and property of the City of Redlands in trust for City's benefit, is not to divulge its confidences, and is to be entitled to the candid cooperation of all City of Redlands' employees in all matters related to the assigned files and any related actions.

23. DISCLAIMER OF GUARANTEE. Although Attorney may offer an opinion about possible results regarding the subject matter of this agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guaranty.

24. ENTIRE AGREEMENT. This agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this agreement will be binding on the parties.

25. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

26. MODIFICATION BY SUBSEQUENT AGREEMENT. This agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement to the extent that the parties carry it out.

27. ARBITRATION OF FEE DISPUTE. If a dispute arises between Attorney and Client regarding attorney's fees under this agreement and Attorney files suit in any court other

than small claims court, Client will have the right to stay that suit by timely electing to arbitrate the dispute under Business and Professions Code sections 6200-6206, in which event Attorney must submit the matter to such arbitration.

28. MEDIATION CLAUSE. If a dispute arises out of or relating to any aspect of this agreement between Client and Attorney, or the breach thereof, and if the dispute cannot be settled through negotiation, Attorney and Client agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure.

29. ATTORNEY'S FEES AND COSTS IN ACTION ON AGREEMENT. The prevailing party in any action or proceeding to enforce any provision of this agreement will be awarded reasonable attorney's fees and costs incurred in that action or proceeding or in efforts to negotiate the matter.

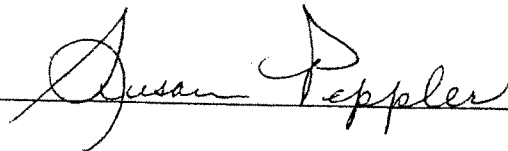
30. EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement will be the date when, having been executed by Client, one copy of the agreement is received by Attorney. Once effective, this agreement will, however, apply to services provided by Attorney on this matter before its effective date.

The foregoing is agreed to by:

CITY OF REDLANDS (Client)

Dated: 5-13-04

By

_____

MILLER AXLINE & SAWYER, a Professional Corporation

Dated: 5/24/04

By

_____
DUANE C. MILLER