



City of La Quinta

CITY / SA/ HA/ FA MEETING DATE: July 1, 2014

ITEM TITLE: APPROVE AMENDMENT NO. 1 TO THE AGREEMENT WITH RUTAN & TUCKER, LLP LEGAL SERVICES AND DESIGNATION OF CITY ATTORNEY

AGENDA CATEGORY:

BUSINESS SESSION:

CONSENT CALENDAR: 5

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Approve Amendment No. 1 to Rutan & Tucker, LLP Agreement for Contract Legal Services and approve the appointment of William H. Ihrke as City Attorney.

EXECUTIVE SUMMARY:

- The Contract for Legal Services with Rutan & Tucker (Rutan) has not been updated since 2010.
- M. Katherine Jenson, the City's current Rutan attorney, specializes in land use litigation and California Environmental Quality Act matters.
- Mr. Ihrke, also an attorney with Rutan, specializes in areas that the City will require in the upcoming year.
- Rutan is proposing an amendment to the agreement to appoint Mr. Ihrke as the City Attorney and Ms. Jenson as the Assistant City Attorney. In addition, the Amendment updates the contract insurance requirements.

FISCAL IMPACT:

No changes are proposed to the rates charged by Rutan.

BACKGROUND/ANALYSIS:

Rutan has provided legal services for the City since the 1990s and became the contract City Attorney in 2000. Ms. Jenson has served as City Attorney since that time. Ms. Jenson is an equity partner at Rutan and serves as the Chair of the

Rutan Land Use/Natural Resources Practice Group, and her practice focuses primarily on CEQA and land use litigation.

Mr. Ihrke is also an equity partner at Rutan and is the Chair of Rutan's Affordable Housing & Economic Development Practice Group. Among other state-wide and regional organizations, he has led regular conference calls and advisory meetings for the League of California Cities' Post-Redevelopment Working Group, and he has extensive experience in post redevelopment agency legal work. While Mr. Ihrke handles litigation, including the City's litigation against the Department of Finance, his primary focus is on transactional and advisory work, including development financing involving public agencies, post Redevelopment Agency wind down issues, review and compliance with state and local entitlement laws, and affordable housing and real estate transactions. Mr. Ihrke also has extensive experience advising elected and appointed public officials on open meeting laws, public records requirements, and conflict-of-interest matters. Given the nature of the most significant work for the City Attorney's Department in the upcoming year, Rutan has recommended that Mr. Ihrke be designated as the City Attorney and that Ms. Jenson be designated as the Assistant City Attorney.

Amendment No. 1 also updates the insurance requirements to reflect the existing standard terms (Attachment 1). No change in the fee schedule is proposed.

ALTERNATIVES:

Council may provide direction as to alternative changes to the proposed agreement.

Report prepared by: M. Katherine Jenson, Rutan & Tucker, LLP, City Attorney
Report approved for submission by: Frank J. Spevacek, City Manager

Attachment: 1. Amended Agreement

**AMENDMENT NO. 1 TO AGREEMENT FOR
CONTRACT LEGAL SERVICES**

THIS AMENDMENT NO. 1 TO AGREEMENT FOR CONTRACT LEGAL SERVICES ("Amendment") is made and entered into as of the 2nd day of July, 2014 ("Effective Date"), by and between the CITY OF LA QUINTA, a California municipal corporation ("City"), and RUTAN & TUCKER, LLP, a limited liability partnership ("Rutan").

RECITALS:

- A. Rutan has served as the contract City Attorney for the City since June 2000.
- B. The most recent Agreement for Contract Legal Services ("Contract") between the City and Rutan was entered into on June 21, 2010.
- C. The City and Rutan wish to amend the Contract to update the insurance requirements and to re-designate the positions of City Attorney and Assistant City Attorney.

AMENDMENT:

In consideration of the foregoing Recitals, which are incorporated herein by this reference, and the covenants and promises hereinafter contained, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

- I. Section 4.1 of the Contract shall be amended to read as follows:

4.1 R&T as General Counsel.

William H. Ihrke is designated, effective July 2, 2014, as the City Attorney and Successor Agency's general counsel, and shall have the primary responsibility for coordination of all legal services for the City and Agency. M. Katherine Jenson was designated, effective June 27, 2000, as the City Attorney and Successor Agency's general counsel, and is designated, effective July 2, 2104, as the Assistant City Attorney and Assistant Agency Counsel. During the term of this Agreement, City Attorney will be either William H. Ihrke or M. Katherine Jenson, as determined by the City Council.

- II. Section 4.6 of the Contract shall be amended to read as follows:

4.6 Insurance.

4.6.1 Insurance. Prior to the beginning of and throughout the duration of the Work performed under this Agreement, Rutan shall procure and maintain, at its cost,

and submit concurrently with its execution of this Agreement, Commercial General Liability insurance against all claims for injuries against persons or damages to property resulting from Rutan's acts or omissions arising out of or related to Rutan's performance under this Agreement. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Rutan's performance hereunder and neither City nor its insurers shall be required to contribute to any such loss. A certificate evidencing the foregoing and naming City and its officers and employees as additional insured (on the Commercial General Liability policy only) shall be delivered to and approved by City prior to commencement of the services hereunder. The following policies shall be maintained and kept in full force and effect providing insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-:VI:

Commercial General Liability (at least as broad as ISO CG 0001)
\$1,000,000 (per occurrence)
\$2,000,000 (general aggregate)

Commercial Auto Liability (at least as broad as ISO CA 0001)
\$1,000,000 (per accident)

Errors and Omissions Liability
\$1,000,000 (per claim and aggregate)

Workers' Compensation
(per statutory requirements)

Rutan shall carry automobile liability insurance of \$1,000,000 per accident against all claims for injuries against persons or damages to property arising out of the use of any automobile by Rutan, its officers, any person directly or indirectly employed by Rutan, any subcontractor or agent, or anyone for whose acts any of them may be liable, arising directly or indirectly out of or related to Rutan's performance under this Agreement. If Rutan or Rutan's employees will use personal autos in any way on this project, Rutan shall provide evidence of personal auto liability coverage for each such person. The term "automobile" includes, but is not limited to, a land motor vehicle, trailer or semi-trailer designed for travel on public roads. The automobile insurance policy shall contain a severability of interest clause providing that coverage shall be primary for losses arising out of Rutan's performance hereunder and neither City nor its insurers shall be required to contribute to such loss.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Rutan and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Rutan shall carry Workers' Compensation Insurance in accordance with State Worker's Compensation laws with employer's liability limits no less than \$1,000,000 per accident or disease.

All insurance required by this Section shall be kept in effect during the term of this Agreement and shall not be cancelable without written notice to City of proposed cancellation. The procuring of such insurance or the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Rutan's obligation to indemnify City, its officers, employees, contractors, subcontractors, or agents.

4.6.2 Remedies. In addition to any other remedies City may have if Rutan fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.
- b. Order Rutan to stop work under this Agreement and/or withhold any payment(s) which become due to Rutan hereunder until Rutan demonstrates compliance with the requirements hereof.
- c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to any other remedies City may have. The above remedies are not the exclusive remedies for Rutan's failure to maintain or secure appropriate policies or endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Rutan may be held responsible for payments of damages to persons or property resulting from Rutan's or its subcontractors' performance of work under this Agreement.

4.6.3 General Conditions pertaining to provisions of insurance coverage by Rutan. Rutan and City agree to the following with respect to insurance provided by Rutan:

1. Rutan agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Rutan also agrees to require all contractors, and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Rutan, or Rutan's employees, or agents, from waiving the right of subrogation prior to a loss. Rutan agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this agreement are intended to apply to the full extent of the policies.

Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Rutan shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Rutan's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Rutan or deducted from sums due Rutan, at City option.

8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Rutan or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.

9. Rutan agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by Rutan, provide the same minimum insurance coverage required of Rutan. Rutan agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Rutan agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

10. Rutan agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein (with the exception of professional liability coverage, if required) and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Rutan's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Rutan, which may include

reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

11. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Rutan ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Rutan, the City will negotiate additional compensation proportional to the increased benefit to City.

12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

13. Rutan acknowledges and agrees that any actual or alleged failure on the part of City to inform Rutan of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

14. Rutan will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

15. Rutan shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Rutan's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five (5) days of the expiration of coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Rutan under this agreement. Rutan expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

20. Rutan agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Rutan for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

21. Rutan agrees to provide immediate notice to City of any claim or loss against Rutan arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

III. All other provisions of the existing Agreement will remain the same.

“CITY”
CITY OF LA QUINTA, a municipal
corporation

Date: _____

Frank J. Spevacek, City Manager

ATTEST:

Susan Maysels, City Clerk

“RUTAN”
RUTAN & TUCKER, LLP

Dated: _____

M. Katherine Jenson, City Attorney