

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into this 14th day of September, 1994, by and between the CITY OF SOUTH SAN FRANCISCO, a general law city and municipal corporation of the State of California ("City") and MEYERS, NAVE, RIBACK, SILVER & WILSON, a professional corporation of attorneys licensed to practice law ("Law Firm").

RECITALS

Legal services have heretofore been provided to City through a departmental organization consisting of a City Attorney and an Assistant City Attorney; and

From time to time the legal services provided to City by this departmental organization have been augmented by outside legal counsel paid at the prevailing rates for those services; and

In furtherance of its policy to achieve efficiencies and economies in the operation of City's government, without impairing whatsoever the level, amount, and quality of legal services essential to its operation, the City Council desires to change the method by which City obtains legal services from a departmental organization to a contract for professional services; and

Government Code Section 36505 provides that the City Council may appoint a City Attorney, and Government Code Section 37103 authorizes general law cities to contract for legal services; and

Prior to March 21, 1994, the City employed an in-house City Attorney and Assistant City Attorney and the equivalent of 1-1/2 legal secretary positions.

Following the resignation of the in-house City Attorney, the City hired the Law Firm to serve as Interim City Attorney until such time as the City Council determined whether to replace the in-house City Attorney or to contract for all City Attorney services. Pursuant to a separate contract, the Law Firm has served as Interim City Attorney since March 21, 1994.

Law Firm specializes in municipal and public agency law and is willing and qualified and duly licensed to provide legal services to City as City Attorney under this contract as an independent contractor, subject to the terms and conditions hereinafter stated;

NOW, THEREFORE, the parties hereto agree as follows:

1. Basic Services. Law Firm shall provide, through such members or associates of the firm as it shall determine, subject to approval of the City Council, all legal services of the highest professional standards usually and normally provided by the City Attorney. These services (the "Basic Services") shall include:
 - (a) Attendance at all City Council and Planning Commission meetings unless excused from such attendance by permission of the Council;
 - (b) Attendance at meetings of such other of City's Commission, Boards or Committees as may be requested by the City Council or City Manager from time to time;
 - (c) Rendering legal advice and issuing written legal opinions to members of the City Council, Commissions, and Committees, and to the City Manager, Department Heads and employees, with respect to City matters;

- (d) Attendance at departmental meetings for preparation of the agenda materials for City Council meetings, and such other staff meetings and conferences as may be required for the proper furnishing of legal advice and assistance;
- (e) Preparation and/or review of ordinances, resolutions, leases, contracts, or other legal documents required by or of City, and review, advice or redrafting of such legal documents as may be prepared by others for proposed use by City;
- (f) Representation of the City before mediators or arbitrators on matters arising from memoranda of understanding or other labor agreements;
- (g) Rendering advice and assistance to City's representatives on labor relations matters, reviewing memoranda of understanding or other labor agreements and drafting implementing legislation or other pertinent documents;
- (h) Rendering advice for City's public works contracts, leases, or other documentation pertaining to agreements to which the City is or proposes to be a party;
- (i) Rendering advice and assistance in the administration of City's general liability risk management and insurance programs;
- (j) Rendering advice and assistance on all matters pertaining to general and special municipal elections;

- (k) Commencement and prosecution of civil and criminal actions to enforce municipal ordinances including enforcement thereof through administrative proceedings;
- (l) Such other duties or services which may be requested by City (excluding those described as Special Services) generally performed by a corporation's general counsel and necessary to assist City in achieving its goals in a sound legal manner; and
- (m) Furnishing legal services of the nature described in paragraphs (a) through (l) for the Redevelopment Agency, or other agencies or entities which are not operated as an integral part of City, but which are created by City as independent agencies, and under the control of City excepting, however, Special Services for such agencies and entities.
- (n) Representation of City before federal and state regulatory bodies such as the Bay Conservation and Development Commission, Regional Water Quality Control Board, Bay Area Air Quality Management District, Internal Revenue Service, Federal Communications Commission, and the Unemployment Appeals Board;

2. Special Services. Law Firm shall provide through such members or associates of the firm as it shall determine such legal services as may be desired or required by action of the City Council, and not within the scope of the Basic Services hereinabove described. These services (the "Special Services") may include:

- (a) The prosecution of actions to acquire property through the use of eminent domain which involve complicated issues such as, by way of example only, challenges to the right of the City to condemn, claims for severance damage, defense of project CEQA compliance and allocation of responsibility for the contamination of the condemned property and/or the determination of the cost to clean up the contamination;
- (b) The defense of actions involving a challenge to a land use action or decision of the City where by prior indemnity and defense agreements, the City's legal costs are paid by the real party in interest, and those actions which involve complicated issues such as, by way of example only, challenge to the General Plan or Element thereof, challenge to the adequacy of an Environmental Impact Report or similar environmental clearance, or discrimination or civil rights claims relative to land use decisions;
- (c) Defense or prosecution of actions for personal injuries or property damage;
- (d) Furnishing legal services for the formation of assessment districts, the issuance of public bonds of such districts, and any litigation pertaining thereto;
- (e) Special Services as described in paragraphs (a) through (d) for the Redevelopment Agency, or other agencies or entities which are not operated as an integral part of the City, but are created and controlled by the City.

Notwithstanding the foregoing, Law Firm shall provide the City Council with the opportunity to select legal counsel other than Law Firm to furnish the City Special Services.

3. Appointment; Assistants. City, by and through its Council, does hereby appoint STEVEN T. MATTAS as City Attorney of the City of South San Francisco. This appointment shall remain in effect during the term of this Agreement and is subject to the terms and conditions hereof. MICHAEL R. NAVE is appointed the Assistant City Attorney. These appointments shall remain in effect during the term of this Agreement unless altered following review held pursuant to Section 13 hereof. Law Firm may recommend to the City Council and the City Council may appoint from time to time such other members of the firm or associates as assistants or deputies as it may deem appropriate or necessary to carry out the duties and to provide the services described herein.

4. Compensation - Basic Services. City shall compensate Law Firm for all Basic Services described in Section 1 hereof Sixteen Thousand Dollars (\$16,000.00) per month.

5. Compensation - Special Services. City shall compensate Law Firm for all Special Services described in Section 2 hereof and which are authorized by action of the City Council on an hourly basis at the rate of One Hundred Fifty Dollars (\$150.00) per hour. Law Firm shall be compensated for ABAG Plan actions at the hourly rate established by ABAG. Compensation for these Special Services shall be made only upon the presentation of an itemized written statement subject to the satisfaction of the Finance Director and City Auditors. Compensation shall be

payable upon billing therefor by Law Firm, and shall be due within thirty (30) days of such billing.

6. Costs and Expenses. City shall reimburse Law Firm for customary and reasonable out-of-pocket costs and expenses advanced or paid on behalf of City in the performance of Law Firm's Special Services upon presentment of an itemized statement subject to the satisfaction of the Finance Director. Such costs or expenses include, for example, fees and charges of certified shorthand reporters, deposition transcription costs, court costs, costs and fees of investigators and expert witnesses or advisors retained for litigation or arbitration; costs of printing briefs or lengthy court documents; computerized research services; travel, lodging, and incidental expenses incurred in carrying out the duties or performing the Special Services hereunder.

7. Municipal Professional Membership, Meetings, Seminars. It is understood and agreed that City and Law Firm mutually benefit from the firm's participation in certain professional activities relating to municipal law. Therefore, at no cost to City, the firm shall maintain its active participation in the activities of the League of California Cities and the State Bar of California.

8. Office Facilities. Prior to the commencement date hereof, City has provided office space for the City Attorney when operating as a department of City. This office space, generally consisting of three offices, a library, and their furnishings is on the first floor of the City Hall Annex, 315 Maple Avenue, South San Francisco, California. Law Firm may use these offices for the rendition of the professional

services until such time as the City shall advise the firm that they are needed for other purposes.

City shall continue to furnish light and space heating for these premises as well as customary janitorial service and maintenance. In the event City advises the firm that these offices are no longer available for its use, the firm shall be responsible for obtaining adequate office space and facilities convenient and necessary to render its professional services.

9. Equipment. Prior to the commencement date hereof, City has provided certain office equipment for the use of the City Attorney when operating as a department of the City. Such office equipment shall remain the property of City and may continue to be used by the Law Firm and its staff for rendition of professional services. Additional office equipment, telephone lines, service and listings not currently provided by the City shall be provided at Law Firm's expense.

10. Library. Prior to the commencement date hereof, City has provided certain volumes of professional books for use by Law Firm and its staff when operating as a department of City. These volumes shall be available for the use of the firm during the term hereof. These volumes and series of publications shall be itemized on an inventory list filed in the Office of the Finance Director and shall remain the property of City.

City shall maintain the series of publications listed on the inventory and shall purchase, at City's expense, all supplements and additional volumes necessary to keep them up to date. These supplements and additional volumes shall, upon purchase, become the property of City.

11. Support Staff. Without otherwise obligating the City to do so, City may retain the Legal Secretary II position to provide support and services, including all acts customarily performed by the Legal Secretary II position to the Law Firm. Any City employees serving as support staff to the Law Firm will remain as City employees with all rights attendant thereto. Law Firm shall have the right to supervise any City-provided support staff consistent with the proper management of the City Attorney's office. City shall have the sole right to determine the support staff level and specific personnel provided to the Law Firm.

12. Insurance. During the term of this Agreement, Law Firm shall take out and maintain at its expense public liability, professional liability, property and workers' compensation policies in the forms and amounts determined appropriate by the Finance Director.

13. Quarterly Review. Quarterly during the term hereof, City Council may review the performance of Law Firm and its members or associates in furnishing the services provided hereunder, and the compensation provisions hereof. The parties may agree to changes or amendments hereto, including, but not necessarily limited to, changes in compensation provisions, which changes or amendments shall be evidenced by written amendment or by minute order evidencing motion duly made and carried by the City Council. Nothing in this paragraph shall be deemed to prevent or inhibit more frequent review of performance, compensation, or other matters relating to this Agreement or otherwise inhibit the free and candid exchange of views between the parties hereto to the end that the legal interests of City shall best be served and Law Firm shall fairly be compensated for legal services rendered.

14. Rendition of Services Incompatible with Interests of City. Law Firm covenants and warrants that in addition to subscribing to the Rules of Professional Responsibility which prevent representation of interests adverse to the City, the members and associates of Law Firm shall refrain from actions or representations of any interest or party which would reflect adversely upon City or tend to bring disfavor on City.

15. Termination. Either party hereto may terminate this Agreement at any time during the term hereof by giving the other party written notice thereof. If given by Law Firm, such notice shall be given at least thirty (30) days before the effective date of termination. If given by City, such notice may be given at any time. If said notice is given by City with thirty (30) days' notice of the effective date of termination, then the firm shall be paid the compensation earned and accrued reimbursable expenses incurred prior to cessation of services. If notice of termination is given by City with less than thirty (30) days notice, City shall pay the firm an amount equal to one month's Basic Services compensation in addition to the compensation earned and accrued reimbursable expenses incurred prior to the date of termination. In the event of termination, the parties shall cooperate to achieve an orderly transition and assumption of duties by any succeeding City Attorney. All files, documents, City-provided equipment, books, furnishings and other City property shall be returned in good order to the City.

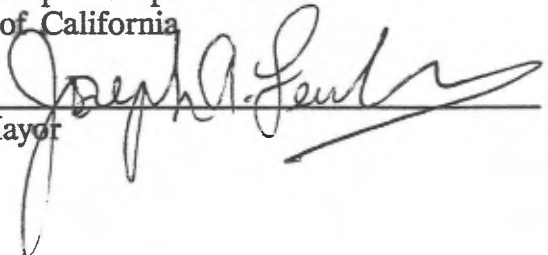
16. Term, Continuation. Subject to annual review and the unconditional power of the Council to terminate, the term of this Agreement shall commence on September 15, 1994 ("commencement date") and shall continue until September 14, 1995, unless otherwise terminated.

17. Nonassignability. The legal services to be provided under this Agreement contemplate the unique combination of legal skills and experience that are possessed by Law Firm. For this reason, this Agreement shall not be assignable by the Law Firm.

18. Notices. Written notices required hereunder shall be delivered personally, or by depositing the same with the City Clerk of the City of South San Francisco or to such other address as the parties may from time to time designate in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SOUTH SAN FRANCISCO,
a Municipal Corporation of the
State of California

By: 
Mayor

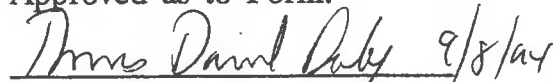
Attest:


Barbara Battaya, City Clerk

MEYERS, NAVE, RIBACK, SILVER &
& WILSON, a Professional Law Corporation

By: 
MICHAEL R. NAVE

Approved as to Form:

 9/8/04
Special Counsel to the City of
South San Francisco