

22. Agreement with Richards, Watson & Gershon, APC and Amendment to Agreement with Nathan & Kamionski, LLP for Legal Services (General Fund and Non-General Fund)

Department(s):

Recommended Action: Authorize the City Manager to execute an agreement with Richards, Watson & Gershon, APC to provide legal services for a three-year term beginning June 1, 2024 and expiring June 30, 2027, with a provision for a one-year extension, in a total amount not to exceed \$300,000 (Agreement No. A-2024-XXX) and a first amendment to the agreement with Nathan & Kamionski LLP to provide legal services, increasing the amount of the compensation by \$450,000 for a total amount of \$500,000 (Agreement No. A-2024-XXX).



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
June 4, 2024

TOPIC: Agreement and Amendment for Legal Services

AGENDA TITLE

Agreement with Richards, Watson & Gershon, APC and Amendment to Agreement with Nathan & Kamionski, LLP for Legal Services (General Fund and Non-General Fund)

RECOMMENDED ACTION

Authorize the City Manager to execute an agreement with Richards, Watson & Gershon, APC to provide legal services for a three-year term beginning June 1, 2024 and expiring June 30, 2027, with a provision for a one-year extension, in a total amount not to exceed \$300,000 (Agreement No. A-2024-XXX) and a first amendment to the agreement with Nathan & Kamionski LLP to provide legal services, increasing the amount of the compensation by \$450,000 for a total amount of \$500,000 (Agreement No. A-2024-XXX).

GOVERNMENT CODE §84308 APPLIES: Yes

DISCUSSION

Richards Waston & Gershon, APC

Richards, Watson & Gershon, APC (RWG) is well known for providing municipal law services to public entities and has done so since 1954. It represents more than 50 public agencies and serves as City Attorney for more than 25 cities. The firm is headquartered in Los Angeles and has offices in Brea, Temecula, and San Francisco. Since 2015, RWG has provided general advice and legal review to the City on a case-by-case basis when urgent matters arise in relation to litigation, election issues, or personnel matters requiring immediate attention. This agreement will authorize the City Attorney to call upon RWG to guarantee the continuity of services and allow the City Attorney, as necessary, to defend or file litigation, or seek legal advice when requested by the City Manager.

RWG currently represents the City in on-going litigation brought by Share Our Selves Corporation in federal court challenging the validity of a zoning ordinance adopted by the City.

Nathan & Kamionski, LLP

On May 7, 2024, the City engaged the law firm of Nathan & Kamionski to represent the City in the matter of Ramon Alvarez v. City of Santa Ana in the U.S. District Court. Nathan & Kamionski was selected by the City after staff issued Requests for Proposals to firms which specialize in civil rights defense cases for public entities. Initial engagement was done to have the firm immediately represent the City but at an amount no greater than allowed under the City Manager’s award authority of \$50,000. The City and the firm reviewed the costs for defense of the City in this action and City Attorney’s Office is seeking approval by the City Council to increase the compensation by an additional \$450,000 over the term of the agreement, including the one-year extension available under the terms of the agreement.

FISCAL IMPACT

Funds are budgeted and available in the following account for the current fiscal year and will be budgeted in the following account for the following fiscal years:

Richards Watson & Gershon, APC

Fiscal Year	Accounting Unit-Account #	Fund Description	Accounting Unit, Account Description	Amount
FY 23-24	01105015-62300	General Fund	General Non-Departmental - Contract Services Professional	\$10,000
FY 24-25	01105015-62300	General Fund	General Non-Departmental - Contract Services Professional	\$90,000
FY 25-26	01105015-62300	General Fund	General Non-Departmental - Contract Services Professional	\$100,000
FY 26-27	01105015-62300	General Fund	General Non-Departmental - Contract Services Professional	\$100,000
			TOTAL	\$300,000

Nathan & Kamionski, LLP

Fiscal Year	Accounting Unit-Account #	Fund Description	Accounting Unit, Account Description	Amount
FY 23-24	08009051-62300	Liability and Property Ins Fund	Liability & Property Ins Fund, Contract Srvc - Professional	\$25,000
FY 24-25	08009051-62300	Liability and Property Ins Fund	Liability & Property Ins Fund, Contract Srvc - Professional	\$225,000
FY 25-26	08009051-62300	Liability and Property Ins Fund	Liability & Property Ins Fund, Contract Srvc - Professional	\$200,000
			TOTAL	\$450,000

EXHIBIT(S)

1. Legal Services Agreement with Richards Watson & Gershon, APC
2. First Amendment to Legal Services Agreement with Nathan & Kamionski, LLP

Submitted By: Sonia Carvalho, City Attorney

Approved By: Alvaro Nuñez, Acting City Manager

**LEGAL SERVICES AGREEMENT WITH
RICHARDS WATSON & GERSHON**

This AGREEMENT, made and entered into this 4th day of June, 2024, by and between Richards Watson & Gershon, a California Professional Corporation (“Attorneys”), and the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the constitution and laws of the State of California (“City”). Collectively City and Attorneys are also referred to as “the Parties.”

RECITALS

- A. The City of Santa Ana and the City Attorney’s Office desire to employ Attorneys to assist the in-house attorneys for the City (“City Attorney”) in the provision of legal services to the City, for general municipal law advisory and litigation matters.
- B. Attorneys represent that they are licensed to practice law in the State of California, have special experience and knowledge providing general municipal law advisory and litigation services and desire to undertake said service.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

1. **RETENTION OF ATTORNEYS** On an as-needed basis, and at the sole discretion of the City, City hereby agrees to and does retain Attorneys, for the compensation hereinafter specified, to assist the City Attorney with general municipal advisory and litigation matters, including but not limited to, elections matters filed against the City and to defend the City, its employees and its officials. Attorneys accept said retention and agree to perform, in a timely and efficient manner, all such services as may be requested by the City Attorney. Attorneys shall confirm their acceptance of work requested by City in writing by e-mail or letter.

2. **COMPENSATION FOR SERVICES RENDERED**

a. City agrees to compensate Attorneys, and Attorneys agree to accept from City, as and for payment in full for all services for the foregoing services, all attorneys will bill their time at \$335/hour, all paralegals will bill their time at \$195/hour, and time will be billed in 1/10th of an hour increments.

b. The total sum to be expended under this Agreement, shall not exceed three hundred thousand dollars (\$300,000) including any extension periods.

c. City agrees to reimburse Attorneys for out-of-pocket expenses, including but not limited to, mileage, copying costs, service of process, and mail services authorized by the City Attorney in connection with the performance of duties under this Agreement.

i. In-house printing, copying, and reproduction charges will be reimbursed at the rate of 20 cents per page.

ii. The City will not reimburse Attorneys for Lexis, Westlaw or other paid legal research subscription services for ordinary legal research. However, the City will reimburse Attorneys for extraordinary legal research costs related to a complex legal matter or assignment and if pre-approved in writing by the City Attorney.

iii. The City will not reimburse Attorneys for ordinary document management systems used for discovery purposes unless such technology is deemed necessary by the City Attorney and if pre-approved in writing by City Attorney.

iv. Attorneys agree to directly pay for vendors, consultants, or experts, and then seek reimbursement from the City.

v. Attorneys agree to seek authorization from City Attorney before retaining experts and consultants.

vi. Automobile travel will be reimbursed at the standard mileage rate in effect at the time of billing by the Internal Revenue Service.

vii. Any costs in excess of \$5,000 require City Attorney approval prior to incurring the expense. All expenses must have supporting documentation submitted with the invoice.

3. METHOD OF PAYMENT Attorneys shall submit a monthly statement specifying the services performed, dates and number of hours, and an itemization of expenses related thereto with supporting documentation (i.e. receipts, invoices, copy of check, etc.). City acknowledges that the fees incurred for work performed by Attorneys on its behalf are due and owing within 30 days of submitting the monthly statement to the City. City will not pay interest on unpaid monthly statements.

City and Attorneys agree that all payments due and owing under this Agreement shall be made through Automated Clearing House (ACH) transfers. City acknowledges that Attorneys have executed the City's standard ACH Vendor Payment Authorization and provided required documentation, and, upon verification of the data provided, the City will be and is authorized to deposit payments directly into Attorneys' account(s) with financial institutions. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

4. CONTROL OF LEGAL MATTERS Attorneys agree that each and every matter or proceeding in which they undertake to assist the City Attorney, as aforesaid, shall be and remain under, and subject to the control and direction of said City Attorney at all stages, and that they shall at all times keep the City Attorney informed of all matters pertaining thereto. City will keep Attorneys informed of all significant developments in matters relating to any representation undertaken by Attorneys. Attorneys further agree, if and when their retention hereunder is terminated by City, as hereinafter specified, they shall return to City Attorney any and all files then in their possession concerning each and every matter or proceeding in which they represented the City pursuant to this Agreement.

5. REPORTING REQUIREMENTS Attorneys agree to keep the City Attorney, and any other person(s) designated by the City Attorney, informed of significant events in the Actions, including but not limited to trial date, filing of motions for summary judgment, hearing date for motion for summary judgment, settlement conference date, and mediation date. Attorneys also agree to provide the following reports:

- a. 45-day initial evaluation of case and budget; and
- b. Pre-trial report 90 days before trial;

6. TERM The term of this Agreement shall commence on June 4, 2024 and terminate on June 30, 2027, unless terminated earlier pursuant to Section 15 below. The Parties agree that this Agreement will cover services provided by Attorneys between June 1, 2024 and June 3, 2024. The term of this Agreement may be extended for up to one (1) year upon a writing executed by both Parties, including the City Manager and the City Attorney.

7. INDEPENDENT CONTRACTORS It is mutually agreed by and between the Parties that, in the performance of their covenants hereunder, Attorneys are and shall be independent contractors, and not officers or employees of City.

8. INSURANCE Attorneys shall provide to the Executive Director of Human Resources proof of insurance prior to undertaking performance of work under this Agreement, Attorneys shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage. (Not required if consultant does not use an automobile to perform services)
- c. Workers’ Compensation: Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- d. Professional Liability (Errors and Omissions): Insurance appropriate to the Consultant’s profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Attorneys maintain broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Attorneys. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

- e. Other Insurance Provisions - The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - i. Additional Insured Status- The City of Santa Ana, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Attorneys including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Attorneys' insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
 - ii. Primary Coverage- For any claims related to this contract, Attorneys' insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Santa Ana, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Santa Ana, its officers, officials, employees, or volunteers shall be excess of Attorneys' insurance and shall not contribute with it.
 - iii. Notice of Cancellation- Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City. For the professional liability policy only, the notice of cancellation may be given by Attorneys.
- f. Waiver of Subrogation- Attorneys hereby grant to City a waiver of any right to subrogation, which any insurer of said Attorneys, other than professional liability insurers or insurance, may acquire against the City by virtue of the payment of any loss under such insurance. Attorneys agree to obtain any endorsement that may be necessary to affect the waiver of subrogation as described in this section, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- g. Self-Insured Retentions - Self-insured retentions must be declared to and approved by the City. RWG has declared to the City that it has a \$250,000 self-insured retention for professional liability insurance and City has pre-approved that retention level.
- h. Acceptability of Insurers - Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A-:VII, unless otherwise acceptable to the City.
- i. Claims Made Policies - If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date, if any, must be shown and must be before the date of the contract or the beginning of contract work.

- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Attorneys must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- j. Verification of Coverage – Attorneys shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Attorney’s obligation to provide them. The City reserves the right to require copies of all required insurance policies, including endorsements required by these specifications, at any time. Attorneys may provide redacted policies or specimen forms in order to prevent the disclosure of material attorneys deem confidential, privileged, or trade secret information.
- k. Subcontractors - Attorneys shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Attorneys shall ensure that City is an additional insured on insurance required from subcontractors.
- l. Special Risks or Circumstances – City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances

9. INDEMNIFICATION Attorneys agree to and shall indemnify and hold harmless the City, its officers, agents, employees, and representatives from liability for personal injury, damages, restitution, judicial or equitable relief to the extent caused by Attorneys’ negligent or wrongful performance or conduct related to this Agreement.

10. CONFIDENTIALITY All information and documents shared with Attorneys as well as all work performed by Attorneys in connection with this Agreement should be treated as strictly confidential. Moreover, all communications between Attorneys and City shall be treated as protected by the attorney-client privilege and the attorney work product doctrine. Accordingly, information received by Attorneys from City should be kept in a secure place, and no information about this work may be disclosed to any third party without City’s prior written approval. Attorneys shall provide materials directly to the City Attorney, Sonia Carvalho, or selected members of her office, as directed by the City Attorney. All such information and any written product in connection with Attorneys’ retention under this Agreement, shall be marked as “PRIVILEGED AND CONFIDENTIAL / ATTORNEY-WORK PRODUCT” and shall be the property of the City Attorney’s Office, and shall be returned/provided to the Office of the City Attorney with all copies upon the request of the City Attorney. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Attorneys, disclosed in

a publicly available source; (c) is in rightful possession of the Attorneys without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Attorneys without reference to information disclosed by the City.

11. CONFLICT OF INTEREST CLAUSE Attorneys covenant that it presently has no interests and shall not have interests, direct or indirect, that would conflict in any manner with performance of services specified under this Agreement.

12. NOTICE Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by telefacsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702-1988
Facsimile (714) 647-6956

Courtesy Copy: City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Facsimile (714) 647-6515

To Attorneys: Attention-Saskia Asamura, Esq.
Richards Watson & Gershon APC
350 South Grand Avenue, 37th Floor
Los Angeles, California 90071
Fax (213) 626-0078

A party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

13. EXCLUSIVITY AND AMENDMENT This Agreement represents the complete and exclusive statement between the City and Attorneys, and supersedes any and all other agreements, oral or written, between the Parties. In the event of a conflict between the terms of this Agreement

and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Attorneys. The Parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Attorneys or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any Parties, which are not embodied herein.

14. ASSIGNMENT Inasmuch as this Agreement is intended to secure the specialized services of Attorneys, Attorneys may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject of this Agreement performed by City personnel or by other Attorneys retained by City.

15. TERMINATION This Agreement may be terminated by City at any time. In such event, Attorneys shall be entitled to receive and the City shall pay Attorneys compensation for all services performed by Attorneys prior to receipt of such notice of termination. As a condition of such payment, Attorneys shall deliver to the City all files and records generated under this Agreement as of such date.

Attorneys may terminate this agreement, subject to their obligation to provide written reasonable notice of at least thirty (30) days to arrange alternative representation. In such case, City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in in the Actions.

16. NON-DISCRIMINATION Attorneys shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Attorneys affirm that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

17. JURISDICTION – VENUE This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both Parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. MISCELLANEOUS PROVISIONS Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

19. COUNTERPARTS; SIGNATURES This Agreement may be executed in counterparts, secured via facsimile transmission or otherwise, each of which shall be deemed to be an original. Photocopies of any executed counterpart shall have the same force and effect as an original. City further acknowledges that it has read and received a copy the full text Section 6148 of the California Business and Professions Code prior to signing this Agreement.

20. NO GUARANTEES City understands and acknowledges that there are certain risks and uncertainties in the pursuit of any matter for which Attorneys have been retained, that law is not an exact science, that Attorneys have made no representations or guarantees of success regarding the conclusion of any particular matter, and that all expressions relative thereto are matters of Attorneys' opinion only. In other words, Attorneys make no representations or guarantees of success regarding any matter.

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

ATTEST:

CITY OF SANTA ANA

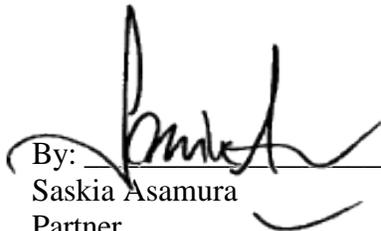
Jennifer L. Hall
City Clerk

Alvaro Nuñez
Acting City Manager

APPROVED AS TO FORM:
SONIA R. CARVALHO
City Attorney

RICHARDS WATSON & GERSHON

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

By: 
Saskia Asamura
Partner

**FIRST AMENDMENT TO LEGAL SERVICES AGREEMENT WITH
NATHAN & KAMIONSKI LLP**

This AGREEMENT is made and entered into on this 4th day of June, 2024, by and between Nathan & Kamionski LLP, an Illinois limited liability company (“Attorneys”), and the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the constitution and laws of the State of California (“City”).

RECITALS

- A. On May 7, 2024, the City and Attorneys entered into Agreement No. N-2024-171 (“Agreement”) to provide legal services to defend the City and certain individually named Defendant employees in the matter of *Ramon Alvarez v. City of Santa Ana, et al*, United States District Court Case No.:8:24-cv-00516-DMG-KS. The Agreement is still in effect.
- B. Pursuant to Section 2.b, Compensation for Services Rendered, the total not to exceed amount of the Agreement is \$50,000.00. In order to adequately defend the City and the individually named Defendant employees the compensation section of the Agreement requires amendment. The parties now wish to increase the compensation by an additional \$450,000.00, for a total not to exceed amount of \$500,000.00.

The Parties therefore agree:

- 1. **Section 2.b, Compensation for Services Rendered**, is amended to increase the compensation by an additional \$450,000.00, for a total not to exceed amount of \$500,000.00.
- 2. Except as modified by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

[Signatures on following page]

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

ATTEST:

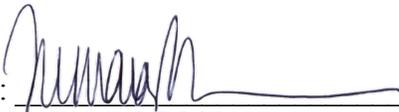
CITY OF SANTA ANA

JENNIFER L. HALL
City Clerk

ALVARO NUÑEZ
Acting City Manager

APPROVED AS TO FORM:
SONIA R. CARVALHO
City Attorney

NATHAN & KAMIONSKI, LLP

By: 

TAMARA BOGOSIAN
Senior Assistant City Attorney



By: Avi T Kamionski
Title: Partner