

RECEIVED

City of South Gate

Item No. 5

FEB 21 2018

CITY COUNCIL

CITY OF SOUTH GATE  
OFFICE OF THE CITY MANAGER

AGENDA BILL

3:10pm

For the Regular Meeting of: February 27, 2018

Originating Department: Administration

Department Head:

  
Michael Flad

City Manager:

  
Michael Flad

**SUBJECT: AMENDED AGREEMENT TO CONTRACT NO. 2163 RETAINER AGREEMENT WITH THE LAW FIRM OF ALVARADOSMITH TO REFLECT AN ADJUSTMENT IN HOURLY RATES FOR LEGAL SERVICES**

**PURPOSE:** To amend the existing agreement with the law firm of AlvaradoSmith, including Amendment Nos. 1-4, inclusive, increasing hourly rates for legal services.

**RECOMMENDED ACTIONS:**

- a. Approve Amended and Restated Retainer Agreement (Amended Agreement) to Contract No. 2163 with AlvaradoSmith, a Professional Corporation, increasing hourly rates for legal services; and
- b. Authorize the Mayor to execute the Amended Agreement in a form acceptable to the City Manager.

*9/1/18*

**FISCAL IMPACT:** The expected increases are estimated to fall within the approved professional services budget for legal services. However, existing and/or future litigation expenses by outside law firms hired by the City may be difficult to project. Historically, legal services expenditures related to the City Attorney's Office have come in under budget.

**ANALYSIS:** None

**BACKGROUND:** Since February 2003, AlvaradoSmith, through Raul F. Salinas, has served as the City Attorney. Attorneys of AlvaradoSmith provide legal services to each of the City's departments and municipal corporations. During this period, the City has executed various retainer agreements, and amendments Nos. 1-4. AlvaradoSmith has prepared the Amended Agreement to restate and include the material provisions of the prior agreements and Amendments Nos. 1-4. Under the proposed increase, services provided by the City Attorney for attending regular and special City Council meetings, and meetings of the City's Planning Commission, Successor Agency to the Community Development Commission, Public Housing Authority, Public Access Corporation, Public Finance Authority and Public Utility Authority shall be billed at the rate of \$225. Services rendered for other City matters shall range from \$250 to \$275 per hour. These rates reflect discounted fees which take into account the firm's longstanding relationship with the City.

**ATTACHMENT:** Proposed Amended and Restated Agreement with AlvaradoSmith, APC.



Los Angeles Office

Raymond G. Alvarado  
1936-2014

February 21, 2018

City Council  
City of South Gate  
8650 California Avenue  
South Gate, California 90280

Re: Amendment No. 5 (Restated Retainer Agreement)

Dear Members of the City Council:

**Summary of Past Retainer Agreements**

Since February 2003, AlvaradoSmith, a Professional Corporation (the "Firm" or "we"), through Raul F. Salinas, has served as the City Attorney for the City of South Gate. In the course of that 14 year time span, the City has entered into various retainer agreements and amendments with the firm. These agreements or amendments are dated February 5, 2003 (Contract No. 2104), October 22, 2003 (Renewal of Contract No. 2104); January 27, 2004 (Renewal of Contract 2104); March 1, 2004 (Extension of Contract); agreement dated April 27, 2004 (Contract No. 2163); July 22, 2004 (Amendment No. 1 to Contract No. 2163); July 5, 2005 (Amendment No. 2 to Contract No. 2163); June 27, 2005 (Amendment No. 2 to Contract 2163); June 21, 2007 (Amendment No. 3 to Contract 2163); and March 10, 2015 (Amendment No. 4 to Contract 2163).

**Rates and Other Proposed Changes in This Amended Agreement**

This Amendment No. 5 is intended to copy the material terms of the prior agreements and amendments into a single document, and to reflect price increases effective March 1, 2018.

The Firm proposes to increase its hourly rates to \$225 per hour for time spent attending public and closed session, regular and special meetings, of the City Council, and its municipal corporations, including the Successor Agency to the Community Development Commission, the Planning Commission, the Public Housing Authority, the Public Finance Authority, the Public Utility Authority, and the Public Access Corporation. Time spent by Mr. Salinas attending to agenda bill review and preparation thereof, and weekly department head

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**ORANGE COUNTY**

1 MACARTHUR PLACE, SUITE 200  
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T 714.852.6800  
F 714.852.6899

**LOS ANGELES**

633 W. FIFTH STREET, SUITE 1100  
LOS ANGELES, CA 90071  
T 213.229.2400  
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**SAN FRANCISCO**

235 PINE STREET, SUITE 1200  
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meetings shall be billed at the rate of \$250 per hour. Time spent by all other attorneys of the Firm performing similar or different services shall be billed at the rate of \$275 per hour.

In addition to the hour rate changes, this Amended Agreement reflects changes to the document retention practice by AlvaradoSmith to match the current practice and procedures used by the City. All litigation files generated by AlvaradoSmith, and documents maintained by the City Attorney's office, shall comply with the City's prescribed retention practices and policy as may be in effect or changed from time to time. Upon completion of a matter involving litigation, AlvaradoSmith is authorized to deliver said file to the City for custody, control and destruction in accordance with the City's retention policy. Upon delivery of such files, AlvaradoSmith shall be relieved of any further obligation to retain client files belonging to the City.

### **Terms and Conditions**

The Firm, through Raul F. Salinas, has and will continue to serve as City Attorney, Successor Agency Counsel, Legal Counsel, or such other title as may be provided or reflected by the City or any and all of its related municipal corporations from time to time. Notwithstanding, the City may terminate this contract at any time with or without cause.

The Firm will advise the City on all matters and handle all legal affairs as may be necessary in accordance with the guidance and direction provided by the City. The Firm agrees to provide the City with office hours in accordance with the City's request and to make the Firm's lawyers available as may be necessary to properly service the City's legal needs and provide complete legal representation.

### **The Retainer**

The Firm will not require that the City deposit any retainer into the Firm's client trust account.

### **Our Fees and Billing Policy**

Mr. Salinas will be primarily responsible for the City's representation. From time to time, we may involve other attorneys or paralegals in your work where this is appropriate and cost-effective.

Our legal fees are based on how much time is spent on your matter and by whom it is spent. Time is charged in minimum units of tenths (1/10) hours. The Firm proposes to increase its hourly rates to \$225 per hour for time spent attending public and closed session, regular and special meetings of the City Council, and its municipal corporations, including the

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Successor Agency to the Community Development Commission, the Planning Commission, the Public Housing Authority, the Public Finance Authority, the Public Utility Authority, and the Public Access Corporation. Time spent by Mr. Salinas attending to agenda bill review and preparation thereof, and weekly department head meetings shall be billed at the rate of \$250 per hour. Time spent by all other attorneys of the Firm performing similar or different services shall be billed at the rate of \$275 per hour. Paralegal rates shall be billed at the rate of \$125.

In addition to fees for professional services, our bills will include various costs and expenses we incur in performing legal services under this agreement. The costs and expenses commonly include fees fixed by law or assessed by public agencies, long distance telephone calls, messenger and other delivery fees, postage, parking and other local travel expenses, computerized legal services, photocopying and other reproduction costs, clerical staff overtime, word processing charges, charges for computer time and other similar items. If required in the course of representing the City, you also agree to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by our personnel.

Firm policy prevents us from advancing money on behalf of clients for out-of-pocket costs attendant to legal services. We will ask you to pay for any out-of-pocket costs required in connection with your matter directly as such costs are incurred.

Each month you will receive an itemized statement of our fees and expenses for the preceding month. Each statement will describe the work done and the amount due. If you have questions concerning your statement at any time, please do not hesitate to contact me for clarification. Each statement is due upon presentation and deemed delinquent if not paid within thirty (30) days from its date. A late charge equal to ten percent (10%) per year will be assessed on any amounts not paid within thirty (30) days of the invoice date. If any statement is not paid promptly, we reserve the right to discontinue performing services, regardless of the status of the matter at that time.

We will provide you with additional details on these and any expenses upon request. Invoices for out-of-pocket expenses, such as long-distance telephone charges, deposition transcripts, expert witness fees, courier and messenger services, postage, purchased copies, car rental, and travel expenses will be billed at the actual cost incurred by us. In-office photocopying is billed at 10¢ per page, facsimiles at \$.50 per page, and personal automobile mileage at 54¢ per mile for travel to meetings outside the City of South Gate.

We will bill you for our services and expenses monthly, and you agree to pay our statements in the ordinary course of process the City's fees and invoices. We believe that our billing procedures are simple and clear. Our billings, together with communications with you through telephone conversations, meetings, letters, facsimiles and copies of significant documents, serve to inform you of the work being performed on your behalf. However, should you have any questions or comments about hourly rates, hours charged, billing practices, or expenses, we strongly encourage you to contact us promptly.

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If you request or require any changes to the format of our billings, including the amount of detail or itemization of our work, or if you have concerns with the accuracy or amount of any billing to you, you agree to notify us in writing within 60 days of receipt of the billing of any such concern, request, requirement or objection. Upon the expiration of the 60 day period, all billings not previously objected to in writing shall be deemed accepted and a part of this written agreement.

In certain circumstances, a court or arbitrator might order payment of costs or attorney fees by one party to the other. If any such fees or costs are paid to us, they will be credited against the amount you owe us, but you will remain liable for any unpaid portion of our bills. If a court awards fees or costs against you, in favor of the opposing party, you will be responsible for payment of that amount separately from, and in addition to, any amounts due us. In the event a recovery is obtained, our Firm will have a lien for all unpaid attorney fees and costs advanced on all claims and causes of action that are the subject of the representation under this agreement and on all proceeds of any recovery obtained whether by settlement, arbitration award, or court judgment.

#### **Conflicts of Interest**

Based on our discussions with you, we have not identified any conflicts of interest which we believe would legally prevent us from performing the engagement. In the event any potential conflict is subsequently identified, we will take appropriate steps to attempt to resolve any issues. In the event that such a conflict cannot be resolved, we will confer with you regarding your alternatives. However, by signing this letter, you hereby consent to such representation, despite the possibility of a conflict later becoming apparent.

#### **Retention of Other Counsel**

The Firm's practice is to obtain approval from the City prior to the retention of any other outside law firms before proceeding to contract with their legal services. In unique circumstances, it may be necessary to retain outside counsel immediately without prior City approval in order protect the City's legal interests. In such circumstances, the City hereby authorizes the Firm to proceed with such retention and to request that the City Attorney seek ratification of the retention at the City's next regularly scheduled council meeting. The City agrees, subject to concurrence by the Firm, to authorize the expenditure of fees incurred by any such retained firm which may be incurred from the date of retention to the date the matter is brought before the City for ratification.

#### **Your Promise to Provide Information and Cooperate with Us**

We, as your attorneys, strive to provide the highest quality of services, and we expect from our clients the highest degree of cooperation and assistance. You agree to fully respond to any inquiries we make, provide written materials or documents in a timely manner,



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and otherwise provide us with any and all information necessary for the prosecution and/or defense of litigation matters that we handle on your behalf and for the resolution of transactional matters that we handle on your behalf. Failure to provide such information could prejudice your interests in such litigation and transactional matters and may ultimately reduce the effectiveness of our representation.

Further, we make every effort to ensure there are no conflicts of interest among our clients. For this purpose we ask that you submit to us a list of all subsidiary or affiliated entities and your parent company or companies, as well as a list of the shareholders of closely held corporations, if applicable, principal officers and board members, and any other person or entity involved in your matter that you have reason to believe now has, or has in the past had, a relationship with the Firm. Please update this information as changes occur.

#### **No Guaranty**

No law firm or attorneys, including our Firm and our attorneys, can guarantee the outcome of any legal dispute. Thus, although an attorney or attorneys of our Firm may offer an opinion about possible results regarding any matter in which we represent or advise, we do not and cannot guarantee any particular result. Moreover, we cannot predict in advance what the total amount of fees will be for our services. You acknowledge that the Firm has made no promises about the outcome of your matter, including the costs and expenses of litigation, and that opinions offered or budgets provided by the Firm or any of its attorneys will not constitute guaranties.

#### **Termination of Representation**

We do not foresee any circumstance that would lead to termination of our attorney-client relationship, other than completion of all anticipated tasks on your behalf. However, the law allows a client the right to terminate the representation of an attorney or law firm at any time. Subject to our giving you reasonable notice for you to arrange alternative counsel, our Firm reserves the right to discontinue work on pending matters or terminate our attorney-client relationship at any time that a statement remains due and unpaid 60 days after it has been sent, at any time when we feel our relationship with you puts us in violation of ethical principles and standards, or at any time termination of the relationship is required or permitted by law.

All files and/or documents retained at the Firm relating to your representation are now and will remain your property, as the client, except for the Firm's internal and/or administrative documents, such as attorney work sheets and time sheets. You may have access to these materials at any time, and upon termination of our representation, you may withdraw these materials with prior written notice. The Firm reserves the right to photocopy the client's files at the client's expense. We reserve the right to destroy all files five (5) years after the cessation of representation in a matter unless you request their return.

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All litigation files generated by AlvaradoSmith, and documents maintained by the City Attorney's office, shall comply with the City's prescribed retention practices and policy as may be in effect or changed from time to time. Upon completion of a matter involving litigation, AlvaradoSmith is authorized to deliver said file to the City for custody, control and destruction in accordance with the City's retention policy. Upon delivery of such files, AlvaradoSmith shall be relieved of any further obligation to retain client files belonging to the City.

In the event you choose to change representation to any attorney outside this Firm, a written notice authorizing the transfer of your files must be submitted. We reserve the right to retain photocopies of any of these documents.

#### **If a Dispute Arises Between Us**

We appreciate the opportunity to serve as your attorneys and look forward to a professional and mutually beneficial relationship. However, in the event you become dissatisfied with any aspect of our relationship including, for example, the quality or adequacy of our representation or the fees charged, we encourage you to bring such concerns to our attention immediately. It is our belief that most problems can be resolved by good faith discussion between us. Nevertheless, it is always possible that a dispute may arise which cannot be resolved by discussion between us. In such an event, we will first comply with any mandatory dispute resolution procedures which may apply to any such dispute.

If mandatory dispute resolution procedures regarding our fees or costs have been waived or exhausted or a dispute exists between us regarding a claim that any legal services rendered by an attorney, under this agreement or otherwise, were improperly, negligently, or incompetently rendered, or otherwise rendered in breach of a contractual, legal, or ethical duty, then you and the Firm agree that the dispute will be submitted exclusively to final and binding arbitration before the American Arbitration Association and pursuant to its Commercial Arbitration Rules, unless the parties agree in writing to a different arbitration method or forum. The parties agree that the arbitrator selected must be a retired judge or justice.

In arbitration, there is no right to a trial by jury, and the arbitrator's legal and factual determinations are generally not subject to appellate review.

It is further agreed and understood that initial resort to the courts by either party shall not be considered a waiver of that party's right to compel binding arbitration under this provision. Any legal or arbitration proceedings hereunder may be commenced where the Firm performed the majority of the legal services which are the subject of the dispute or where payment of fees and costs for those services is due. Arbitration shall be in accordance with the law of the state in which the proceedings are commenced. Reasonable attorneys' fees and costs incurred in connection with any such arbitration, litigation or dispute shall be awarded to the prevailing party.

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You are free to discuss the advisability of arbitration with us or your independent counsel or any of your other advisors and to ask any questions which you may have prior to signing this agreement.

**Conclusion**

If the arrangements described in this letter are acceptable to you, please sign one copy of this letter where indicated and return it to me in the envelope enclosed for your convenience. You may retain the duplicate original copy of this letter for your files.

We appreciate the confidence you have in AlvaradoSmith and look forward to serving you.

Very truly yours,

ALVARADO SMITH  
A Professional Corporation

**DRAFT**

Raul F. Salinas

RFS:cec  
Enclosure

Agreed to and accepted this 27th day of February, 2018

“City”

THE CITY OF SOUTH GATE

Dated: February \_\_, 2018

By \_\_\_\_\_  
Maria Davila, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Avalos, City Clerk