REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE:
APRIL 1, 2014

TITLE:
APPROVE AGREEMENT FOR PERSONNEL BOARD LEGAL ADVISOR SERVICES WITH ATKINSON, ANDELSON, LOYA, RUUD & ROMO, A PROFESSIONAL LAW CORPORATION

RECOMMENDED ACTION

Authorize the City Manager and the Clerk of the Council to approve an agreement with Atkinson, Andelson, Loya, Ruud & Romo, A Professional Law Corporation, to act as the Legal Advisor to the City of Santa Ana Personnel Board for three years in an amount not to exceed $40,000 per year, subject to non-substantive changes approved by the City Manager and City Attorney.

DISCUSSION

The Personnel Board was created pursuant to Section 900 of the City Charter. Per Charter Section 912, the Board is required to conduct appeals concerning disciplinary suspensions, demotions or dismissals of any employee having permanent status. Under Charter Section 904, each Board or Commission of the City shall prescribe rules and regulations concerning its operations.

Pursuant to Section 904, on August 8, 1995, the Personnel Board adopted Resolution 95-1 adopting rules for its operation. Rule 8 of the Personnel Board’s Procedural Rules provides that, subject to authorization by the City Council, the Board may retain the services of an independent attorney licensed by the State of California for the purpose of acting as the Board’s Legal Advisor with respect to disciplinary appeals. Appeal hearings before the Personnel Board are akin to judicial trials with multiple complex issues including, but not limited to: issues involving due process, civil procedure, evidence and Federal and State statutory and constitutional rights. In that the Board is constituted by citizens who may have no legal education, knowledge or background, a Legal Advisor is essential to the appropriate conduct of the appeal hearing.

In that the current legal advisor has held the position for in excess of 15 years, a Request for Qualifications was recently published seeking proposals for the Legal Advisor role. A panel consisting of representatives from the City’s police and personnel departments, as well as the city attorney’s office reviewed the responses. Three candidates were selected. Additional questions were posed to these candidates and the responses were reviewed by the panel.
The panel selected attorney Nate Kowalski of the law firm Atkinson, Andelson, Loya, Ruud & Romo based on a number of factors, including his over 20 years of experience in public sector labor law, his prior experience in participating in multiple public sector disciplinary appeals, and his current role as the legal advisor to the City of Glendale Civil Service Commission.

**FISCAL IMPACT**

The funds required to pay for the legal services are available in the Contract Services Professional fund (Account Number 01109050-62300).

APPROVED AS TO FUNDS AND ACCOUNTS:

Sonia R. Carvalho  
City Attorney  
City Attorney's Office

Francisco Gutierrez  
Executive Director  
Finance & Management Services Agency

Edward S. Raya  
Executive Director  
Personnel Services Agency

JAS
LEGAL SERVICES AGREEMENT

This AGREEMENT, made and entered into this ___ day of April, 2014, by and between Atkinson, Andelson, Loya, Ruud & Romo, a Professional Law 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").

RECITALS

A. City desires to employ Attorneys to assist the City Attorney in the provision of legal services to the City, and

B. Attorneys represent that they are licensed to practice law in the State of California, have special experience and knowledge in the field of conducting and facilitating Personnel related Administrative Hearings, and desire to undertake said services.

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 City hereby agrees to and does retain Attorneys, for the compensation hereinafter specified, to assist the City Attorney by acting as the Legal Advisor to the City of Santa Ana Personnel Board. The Legal Advisor's duties shall include, but are not limited to, advising the Personnel Board in conducting administrative appeals of employee disciplinary matters. Attorney shall also provide services related to City matters and other legal issues when and as requested by the City Attorney to do so. Specifically, Attorneys represent that attorney Nate Kowalski will act as the Legal Advisor hereunder. Attorneys shall notify City if any unplanned circumstances should prevent Mr. Kowalski from acting as the Legal Advisor to the Santa Ana Personnel Board. Attorneys accept said retention and agree to perform, in 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.

Attorney will be engaged on a case by case basis by way of a separate letter agreement. Said letter agreement will specify the assignment and the anticipated costs.

2. PAYMENT FOR SERVICES RENDERED

A. FEES City agrees to compensate Attorneys, and Attorneys agree to accept from City, as and for payment in full for all of said services in regard to each such action, compensation at the Attorneys' normal hourly billing rate not to exceed $300.00 per hour for legal services and not to exceed $150.00 an hour for necessary travel time.

B. REIMBURSEMENT FOR COSTS City agrees to reimburse Attorneys for out-of-pocket expenses, including but not limited to, copying costs, service of process, and mail services authorized by the City Attorney in connection with the performance of duties under this Agreement. No reimbursement for mileage shall be paid under this Agreement.

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.
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. **TERM** The term of this Agreement shall commence on the date first written above and terminate June 30, 2017, unless terminated earlier pursuant to Section 13 below. The term of this Agreement may be extended upon a writing executed by the Director of Personnel Services and the City Attorney.

6. **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.

7. **INSURANCE** Attorneys shall provide to the City Attorney proof of Professional Liability (errors and omissions) insurance, with a combined single limit of not less than $1,000,000 per claim, and maintain such insurance throughout the term of this Agreement. If Attorneys fail or refuse to produce and maintain the insurance required by this section, or fail or refuse to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City’s election, to forthwith terminate this Agreement. Such termination shall not affect Attorneys’ right to be paid for its time and materials expended prior to notification of termination.

8. **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 arising out of Attorneys’ negligent or wrongful performance or conduct of this Agreement.

9. **CONFIDENTIALITY** If Attorneys receive from the City information, which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Attorneys agree that it shall not use or disclose such information except in the performance of this Agreement, and further agree to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. “Confidential Information” shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. 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.
9. **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.

10. **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  
    Telefacsimile (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  
    Telefacsimile (714) 647-6515

    **To Attorneys:**
    Atkinson, Andelson, Loya, Ruud & Romo  
    12800 Center Court Drive, Suite 300,  
    Cerritos, CA. 90703  
    Telefacsimile: (562) 653-3333

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.

11. **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.

12. **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.

13. **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 reasonable notice 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 any litigation in which Attorneys may be involved.

14. **DISCRIMINATION** Attorneys shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Attorneys affirm that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

15. **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.

16. **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.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

Maria D. Huizar  
Clerk of the Council

CITY OF SANTA ANA

David Cavazos  
City Manager

APPROVED AS TO FORM:  
SONIA R. CARVALHO  
City Attorney

By:  
Joseph Straka  
Assistant City Attorney

Atkinson, Andelson, Loya, Ruud & Romo

By:  
Name:  
Title:  
Tax ID No.:  

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