

May 3, 2006

Honorable Mayor and Members of
the Hermosa Beach City Council

Regular Meeting of
May 9, 2006

**RETAINER AGREEMENT WITH BIRD MARELLA TO REPRESENT THE
CITY IN THE MACPHERSON OIL COMPANY LITIGATION**

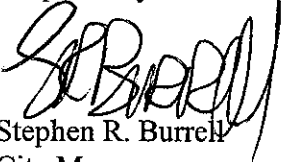
Recommendation:

That the City Council approve the attached retainer agreement with the law firm of Bird Marella and direct the City Manager to execute the agreement.

Background:

The City Attorney and I interviewed a number of law firms that were interested in representing the City in the next phase of this litigation. The firm of Bird Marella possesses the experience, expertise and skills necessary for the next phase of litigation in this matter. A copy of the retainer agreement is attached.

Respectfully submitted,


Stephen R. Burrell
City Manager

Terry W. Bird
twb@birdmarella.com

1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
Telephone (310) 201-2100
Facsimile (310) 201-2110
www.BirdMarella.com

File No. 3200.2

May 2, 2006

**PERSONAL & CONFIDENTIAL;
ATTORNEY-CLIENT PRIVILEGE**

VIA E-MAIL AND FEDEX

Steve Burrell
City Manager
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

**Re: *Hermosa Beach Stop Oil Coalition, et al. v. City of Hermosa Beach, et al.,
and related cross-action, LASC Case No. BC172546***

Dear Steve:

We very much appreciate and look forward to the opportunity to represent the City of Hermosa Beach ("City") in its litigation with Windward Associates and Macpherson Oil Company. At Michael Jenkins' request, I am sending our proposed retainer agreement for your consideration and approval. Please call me at your earliest convenience should you have any question about this agreement.

This letter Agreement sets forth the terms of our representation of the City of Hermosa Beach (the "City") in the above-referenced action (the "Litigation"). It also is intended to establish the terms of any work we are asked to do for the City in any matter related to the Litigation.

A. Scope of Services.

We will represent the City in the Litigation. We also will represent the City in any ongoing related matters, as requested. We will provide those legal services reasonably required to represent the City. We will keep the City informed of our progress and respond to the City's inquiries. While our services will include post-trial motions with

Sharon Ben-Shahar
Terry W. Bird
Joel E. Boxer
Eric E. Bronson

Paul S. Chan
Karis A. Chi
Jennifer L. Coon
Mark T. Dooks

Thomas R. Freeman
Benjamin N. Gluck
J. Scott Hacker
Jason D. Kogan
David D. Leshner

Gary S. Lincenberg
Vincent J. Marella
John M. McCoy III
Ronald J. Nessim

Thomas V. Reichert
Eliwan E. Rhoad
John K. Rubiner
Dorothy Wolpert

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received by us, however, will be credited against the attorneys' fees, costs and other charges incurred by the City.

K. Discharge And Withdrawal.

The City may discharge this firm at any time. We may withdraw with the City's consent, for good cause or for any reason as permitted under Rule 3-700 ("Termination Of Employment") of the California Rules of Professional Conduct. Among the facts that would constitute good cause, but not necessarily the only ones, would be the City's breach of this Agreement, the City's refusal or inability to cooperate with this firm or to follow our advice on a material matter, the existence of any conflict, and any fact or circumstance that would render our continuing representation of the City unlawful, unethical or otherwise inappropriate. The City agrees to sign a substitution of counsel form and/or any other documents reasonably necessary to effectuate or complete any discharge of this firm by the City or any withdrawal by us from this representation.

If any statement for attorneys' fees, costs and other charges is not paid within thirty (30) days of the date of the statement, the City does not pay any retainer within ten (10) days of our demand, or once the Litigation date is set the City does not pay any sums then owing to us and estimated attorneys' fees, charges and other costs for preparing for and completing the Litigation within ten (10) days of our demand, we reserve the right to withdraw from representing the City. The City agrees to consent to, and not oppose, such withdrawal, and to sign a substitution of counsel form and/or any other document reasonably necessary to effectuate this firm's withdrawal.

L. Governing Law/Forum.

This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed and construed in accordance with the laws of the State of California. Any litigation between the parties arising out of or relating to the terms of this Agreement shall be commenced only in any court having jurisdiction thereon in the County of Los Angeles, California. The City consents to the jurisdiction of such court in the County of Los Angeles to hear the litigation and consents and agrees that such court shall have personal jurisdiction over the City. The City consents and agrees that service by first-class mail to the address specified on the first page of this Agreement or to the City's last known address shall be sufficient service of

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H. Attorneys' Lien.

The City hereby grants us a contractual lien pursuant to California Civil Code Section 2881 on any and all claims or causes of action, and all proceeds thereof, that are the subject of our representation of the City under this Agreement. This attorneys' lien will be for any sums due and owing to us for attorneys' fees, costs and other charges at the conclusion of our services. The lien will attach to any recovery the City may obtain, whether by judgment, settlement, Litigation, mediation or otherwise. If requested by us, the City agrees to execute a financing statement (UCC-1) in connection with the lien granted to us hereby.

I. Release, Retention and Disposition of Documents and Property.

At the conclusion of the City's matter, we will release the City's papers and property to the City, subject to any protective order or any non-disclosure agreement. Any funds that exceed the amount of attorneys' fees, costs and other charges due us will also be returned. If the City has not sought or agreed to accept the return of the City's papers and property within one year of the conclusion of the City's matter, we will store the City's papers and property for five years from the conclusion of the City's matter, during which time we shall bill the City semi-annually for storage-related costs and payment shall be due upon receipt of the bill. The City authorizes us, and we shall have the right, to destroy any of the City's papers and property remaining in our possession if the City does not pay this bill within thirty days of the date of the statement. If the City has not taken possession of the City's papers and property within five years after the conclusion of the City's matter, the City authorizes us, and we shall have the right, to destroy any of the City's papers and property remaining in our possession. If the City desires to have us retain the City's papers and property beyond five years after the conclusion of the City's matter, we must enter into a separate written arrangement for the retention of such papers and property.

J. Attorneys' Fees and Costs Paid Pursuant To Court Order Or Settlement.

Any order entered awarding payment of attorneys' fees and/or costs to the City, or any settlement between the parties to the Litigation awarding the City attorneys' fees and/or costs, does not affect the City's obligation to pay this firm's attorneys' fees, costs and other charges under the terms of this Agreement. Any such amounts actually

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2. **Experts, Consultants and Investigators.** To aid in the preparation of this matter, it may become necessary to hire expert witnesses, consultants or investigators. We will not hire such persons unless the City agrees to pay their fees and charges. We will select any expert witnesses, consultants or investigators to be hired in consultation with the City.

3. **Costs Reimbursement.** At the conclusion of the Litigation we will seek recovery of all fees and/or costs which the City may be due under the applicable lease agreement or which are otherwise available.

F. Related Activities.

If we are requested or required, either orally or in writing, to testify as a result of our representation of the City under this Agreement or to defend in any proceeding the confidentiality of the City's communications with us, the City agrees to pay us at our current hourly rates for the time spent by us in such activities and for any costs incurred by us, even if our representation of the City has ended.

G. Billing Statements.

We will send the City monthly statements for attorneys' fees, costs and other charges incurred on the City's behalf. Our billing statements will itemize our work. Payment will be due upon the City's receipt of the statement. The City may, in any event, request a statement. If the City does, we will provide one within ten (10) days following the City's request unless we have provided a statement to the City within 30 days prior to the City's request, in which case we will provide a statement to the City no later than 30 days following the date the most recent statement was provided to the City. The City may make similar requests for statements at intervals of no less than 30 days following the City's initial request for a statement. If the City does, we will provide one within ten (10) days. If any of our statements is not paid within thirty (30) days of the date of the statement, we reserve the right to withdraw from representing the City in connection with this matter. Upon termination of our representation of the City in connection with this matter, for whatever reason, the City shall pay all outstanding statements for attorneys' fees, costs and other charges within thirty (30) days of the date of our final statement.

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the time expended. Likewise, if more than one of our legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. The City acknowledges that we have made no promises about the total amount of attorneys' fees to be incurred by the City under this Agreement.

Once the trial date is set, we may at our election require the City to pay all sums then owing to us and to deposit with us the attorneys' fees, costs or other charges we estimate will be incurred in preparing for and completing the Litigation. The City agrees to pay all sums then owing to us and estimated attorneys' fees, costs and other charges within ten (10) days of our demand. Any unused attorneys' fees, costs or other charges will be returned to the City at the conclusion of our services.

D. Retainer.

As a courtesy, we will not request that the City provide us with a retainer at this time.

E. Costs and Other Charges.

1. **In General.** We will incur various costs and other charges in performing legal services under this Agreement. We will take all reasonable steps to minimize our fees and costs consistent with the City's directions and our obligations as the City's counsel. The City agrees to pay for those costs and other charges in addition to the hourly fees. The costs and other charges commonly include process servers' fees, court reporters' fees, jury fees, witness fees, long distance telephone calls, overnight mail, messenger and other delivery fees, excess postage, charges for computer research, investigation expenses, parking, travel expenses (excluding mileage), including transportation, meals, lodging and all other costs of any out-of-town travel, photocopying and other reproduction costs, clerical staff overtime, and other similar items. Our present charge for photocopying is 15¢ per page. We will work with the City whenever reasonably possible to use its facilities to copy large volumes of documents. Clerical staff overtime will be charged at 1.5 times the base hourly rate or at the rates required by applicable law, whichever is greater. While we may advance costs and other charges and then bill them to the City, we may, at our election, require the City to advance payment of such costs and other charges and/or to pay such costs and other charges directly.

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the court, if any, they will not include a retrial of the City's matter or appeals of any judgment that may be obtained by or against the City, unless we otherwise agree in writing.

B. Client's Duties.

To enable us effectively to represent the City, the City agrees to be truthful, to cooperate with us, to keep us informed of all developments, to abide by this Agreement, to pay our statements for services on time as set forth in this Agreement, to be reasonably available to attend meetings or court appearances, and to keep us advised of any change in address or telephone numbers.

C. Attorneys' Fees.

The City agrees to pay for all attorneys' fees, costs and other charges incurred in connection with the services we perform under this Agreement. For my services, the current rate per hour on this matter will be \$390. The rates for other partners range from \$350 to \$390 per hour. For the services of associates and other attorneys, the current rates will be \$195 to \$350 per hour, depending on each attorney's experience. To the extent we use paralegals, the current rates will be \$115 per hour. We charge for our time in minimal units of a tenth (0.1) of any hour. These rates will remain in effect until March 2007; however, we reserve the right to change them after that. We will provide the City with written notice of any change in our rates. Payment of attorneys' fees, costs and other charges incurred by the City are due upon receipt of each monthly statement. The rates agreed upon here represent significant reductions in our normal rates. They are offered as an accommodation to the City.

The services for which we will charge the City will include all services reasonably required to represent the City in the Litigation and/or related matters, including but not limited to, telephone calls and office conferences relating to the matter, including calls and conferences with the City, other counsel, witnesses and others, legal research, responding to the City's requests for us to provide information to auditors in connection with reviews or audits of financial statements, drafting of documents, travel time to court hearings, trial, depositions or meetings, waiting time in court or elsewhere, and time spent in out-of-town travel. The legal personnel assigned to the City's matter may confer among themselves about the matter. When they do confer, each person will charge for

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process to establish personal jurisdiction over the City for the purpose of any litigation between the parties.

M. Disclaimer of Guarantee.

Nothing in this Agreement and nothing in our statements to the City shall be construed as a promise or guarantee about the outcome of this matter. We make no such promises or guarantees.

N. Effective Date.

This Agreement will be effective as of the date we first performed services for the City in connection with the above-described matter. Please sign the original of this Agreement and return it to me. Enclosed is a copy of the Agreement for the City. We understand that you must obtain approval of this Agreement from the City Council. Your signature on this Agreement will represent binding authority from the City for us to proceed with our work pending final authority of the City Council.

I thank you for giving us the opportunity to represent the City. We look forward to working with your entire team to bring an early and successful resolution to all the outstanding issues. Please feel free to call me if you have any questions or comments about this Agreement or about our engagement.

Sincerely,


Terry W. Bird

TWB/em

Enclosure

cc: Michael Jenkins, Esq. – Via E-mail

225763.1

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I have read and understand the foregoing terms and agree to them, as of the date Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg first performed services in connection with the above-described matter. By signing this Agreement, I acknowledge receipt of a fully executed duplicate of this Agreement.

Dated: May __, 2006

CITY OF HERMOSA BEACH

By _____
Steve Burrell
City Manager