


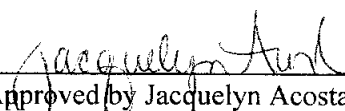


City of Carson Report to Mayor and City Council

March 4, 2014
New Business Consent

SUBJECT: CONSIDER APPROVING A SPECIAL LEGAL SERVICES AGREEMENT WITH HARRIS & ASSOCIATES


Submitted by William W. Wynder
City Attorney


Approved by Jacquelyn Acosta
Acting City Manager

I. SUMMARY

This item is on the agenda at the request of Mayor Dear.

The City Council has determined to engage the legal services of Harris & Associates to provide an independent analysis and legal opinion regarding an administrative investigation being conducted by the City's outside personnel investigator.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE a special "Legal Services Agreement" with the law firm of Harris & Associates, in an amount not to exceed \$20,000.00.
2. APPROPRIATE \$20,000.00 from the unassigned general fund balance to cover the cost of this agreement.
3. AUTHORIZE the Mayor to execute the same.

III. ALTERNATIVES

1. TAKE such other action as the City Council deems appropriate consistent with the requirements of law.
2. RECEIVE and FILE this report and take no action on the same.

IV. BACKGROUND

Last year, the City Council authorized the engagement of an outside personnel investigator to undertake a specific scope of services. In connection with that scope of services, the City Council also determined to engage the services of an outside law firm to independently review the investigator's report(s) and to then advise the City Council of its legal rights and options.

Harris & Associates were selected by the Council to "provide it [the City Council] with a neutral analysis and opinion of the administrative investigation report, including findings of fact" produced by the City's independent investigator. The report(s) of the investigator is nearing completion and it is now appropriate to

engage the services of independent legal counsel to undertake this requested analysis.

V. FISCAL IMPACT

Funds for this contract were not included in the FY 2013/14 general fund budget; therefore, if the agreement is approved, the budget will need to be increased by \$20,000.00. Funds should be appropriated from the unassigned general fund balance to account number 01-11-000-011-6005.

VI. EXHIBITS

1. Legal Services Agreement. (pgs. 3-19)

Prepared by: William W. Wynder, City Attorney

TO: Rev06-19-2013

Reviewed by:

| | |
|-------------------------|--------------------|
| City Clerk | City Treasurer |
| Administrative Services | Public Works |
| Community Development | Community Services |

Action taken by City Council

Date _____ Action _____

CITY MANAGER
FEB 25 PM 3:04

LEGAL SERVICES AGREEMENT

This contract, hereinafter referred to as Agreement, is entered into effective the 15th day of October, 2013, between the **CITY OF CARSON**, a general law city & municipal corporation, organized and existing under the laws of the State of California, hereinafter referred to as the "City," and **HARRIS & ASSOCIATES**, hereinafter referred to as "Consultant."

Explanatory Recitals

WHEREAS, the City is a municipal corporation, organized and existing under the laws of the State of California;

WHEREAS, the City requires the legal services to wit: representing its interest in personnel and employment matters, and such other matters as directed by the Mayor and City Council;

WHEREAS, the City desires to retain Consultant and Consultant desires to perform the services required by it on the terms set forth hereinafter.

Terms of Agreement

1. **Scope of Services**

The City hereby engages Consultant to provide it with a neutral analysis and opinion of the administrative investigation report, including findings of fact, by Jeffrey B. Love & Associates, as directed by the Mayor and City Council. Consultant will not direct Jeffrey B. Love & Associates' investigation, report preparation or findings of fact consistent with the limitations imposed by *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81 and *Howitt v. Super. Ct.* (1992) 3 Cal.App.4th 1575, but shall consult, from time-to-time, with the same on the progress of the investigation, receive and review any interim progress

EXHIBIT NO. 01



reports, if and as prepared by the investigator, and receive and review a draft final report prepared by the investigator.

2. Representation of Consultant

The individuals identified in Exhibit "A" are hereby designated as being the representatives of Consultant authorized to act on its behalf with respect to the work or services specified herein and to make all decisions in connection therewith.

3. Contract Officer. The City Attorney and/or his assigned Deputy City Attorneys, or their successors, are hereby designated as being the representative of the City authorized to act on its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer"). The City Attorney may designate another Contract Officer by providing written notice to Consultant.

4. Compensation

For the services performed and costs incurred by Consultant under this Agreement, the City will make payment to Consultant in accordance with the FEE SCHEDULE (for each attorney and paraprofessional assigned to work on this matter) attached hereto as Exhibit "A" and incorporated by reference, which may be amended only by written consent of the City, in an amount not to exceed Twenty Thousand Dollars (\$20,000.00).

5. Licenses, Permits, Fees and Assessments

Consultant shall obtain, at its own sole cost and expense, such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

6. Warranty

Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work product, services, materials, papers, documents, interviews, recordings, and/or other components thereto to prevent losses or damages, and shall be responsible for all such damages to persons or property, until acceptance of the work by the City, except such losses or damages as may be caused by the City's own negligence. Consultant warrants all work under this Agreement to be of good quality and free from any defect or faulty material and workmanship. Consultant agrees that for a period of one year (or the period of times specified elsewhere in this Agreement or in any guaranty or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Consultant shall, within ten (10) days after being notified in writing by the City of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense.

7. Term of Agreement

This Agreement shall be effective October 15, 2013, and shall remain in effect until terminated as provided in Section 14 herein.

8. Billings and Payments

Consultant shall submit a monthly invoice, as of the end of each month, to the attention of its City Manager, whose mailing address is City of Carson, Carson City Hall, 701 E. Carson St., Carson, CA 90745. Each invoice shall indicate Consultant's name and mailing address, the period for which the billing is being submitted, invoice date and number and the case name. All labor charges shall be itemized by the attorney's name or initial, corresponding hourly rate, hours worked, description of each labor charge, and the total amount due for labor

charges. Direct charges shall be itemized by category; i.e., travel, photocopying, deposition costs, etc.

The City shall make payment to Consultant within 30 days after receipt of the invoice.

9. Successors and Assignment

This Agreement covers professional services of a specific and unique nature. Consultant shall not assign or transfer its interest in this Agreement, without the prior written consent of the City. Any attempt to assign or delegate this Agreement without the prior written consent of the City shall be void and of no force and effect. Consent by the City to one assignment shall not be deemed consent to any subsequent assignment.

10. Time

Time is of the essence in the performance of services under this Agreement. Services provided by consultant shall be commenced and completed in a reasonably prompt and timely manner based upon the circumstances and direction communicated by the City to Consultant.

11. Independent Contractor

Neither the City nor any of its employees or agents shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth in Exhibit "A." Consultant shall perform all services required herein as an independent contractor of the City and shall remain only under such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City.

As an independent contractor, Consultant is solely responsible for the acts of its principals, employees or agents, including any negligent acts or omissions. Consultant and its

principals, employees or agents are not the City employees and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Consultant. Consultant is free to work for other entities while under contract with the City subject to the terms and conditions of this Agreement. Consultant is not entitled to any City benefits.

12. Conflict of Interest

a. Consultant represents that it will advise the City in writing prior to the date of signing of this Agreement of any known relationships with a third party, the City's Mayor and City Council or other City elected officials which would: (1) present a conflict of interest with the rendering of professional services under this Agreement; (2) prevent Consultant from performing the terms of this Agreement; and (3) present a significant opportunity for the disclosure of confidential information.

b. No officer or employee of the City Parties shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any state statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement, and that its representatives and agents have not done so either.

c. The City Parties understand and acknowledge that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated

position of the City Parties, relative to such projects. Any future position of the City Parties of such projects shall not be considered a conflict of interest for purposes of this Section.

d. The City Parties understand and acknowledge that Consultant will perform non-related services for other governmental agencies and private parties, following the completion of the scope of services under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this Section.

e. Consultant (including its principals, employees and agents) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. In the event that Consultant maintains or acquires such conflicting interest, any contract (including this Agreement) involving Consultant's conflicting interest may be terminated by the City.

13. Release of Information

Consultant shall not make public information releases or otherwise publish any information obtained or produced by it as a result of, or in connection with, the performance of services under this Agreement without the prior written authorization from the City. All documents prepared by Consultant under this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City upon completion of Consultant's services, or upon demand by the City.

14. Termination

14.1 Term. Unless terminated earlier in accordance with Section 14.2 below, this Agreement shall continue in full force and effect until one year from the date of the City's execution of this Agreement.

14.2 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon ten (10) days written notice to the other



party. Upon receipt of such notice of termination, Consultant shall immediately cease all work or services hereunder except as may be specifically approved by the City. In the event of termination by the City, Consultant shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the City. The City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

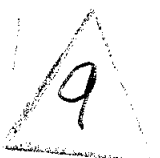
15. Miscellaneous

15.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

15.2 Non liability of City Officers and Employees. No officer or employee of the City Parties shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

15.3 Confidential Information: Release of Information: Role of Special Counsel.

a. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such



information or work product to persons or entities other than the City Attorney without prior written authorization from the Contract Officer, except as may be required by law.

b. Consultant, its officers, employees, or agents shall not, without prior written authorization from the City voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives the City Attorney notice of such court order or subpoena.

c. If Consultant, or any officer, employee, or agent provides any information or work product in violation of this Agreement, then the City Parties shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

d. Consultant shall promptly notify the City Attorney should Consultant, its officers, employees, or agents be served with any summons, complaint, subpoena, notice of deposition, requests for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any party regarding this Agreement and the work performed thereunder. The City Attorney retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with the City Attorney and to provide the City Attorney with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by the City to control, direct, or rewrite said response.

e.

16. Notices

Any notice or communication given this Agreement either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail, as follows:

To City: City of Carson
701 E. Carson St.
Carson, CA 90745
Attn: City Manager
Tel: (310) 952-1720
Fax: (310) 513-6243

To Consultant: John W. Harris, Esq.
Harris & Associates
865 S. Figueroa St., Suite 2750
Los Angeles, CA 90017
Tel: (213) 489-9833
Fax: (213) 489-3761

Either party may change the address to which notice or communication is to be sent by providing advance written notice to the other party.

17. Severability

In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force.

18. Jurisdiction and Venue

This Agreement shall be deemed a contract under the laws of the State of California and for all purposes shall be interpreted in accordance with such laws. Both parties agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought thereunder shall be Los Angeles County, California.

19. Waiver



No delay or failure by either Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

20. Insurance

20.1 General.

Consultant shall, through the duration of this Agreement, and at its sole cost and expense, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement.

20.2 Commercial General Liability.

(with coverage at least as broad as ISO form CG 00 01 01 96) "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000.00 general aggregate and \$1,000,000.00 per occurrence for general liability, bodily injury, personal injury, and property damage.

20.3 Automobile Liability.

(with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") "claims made" coverage shall be maintained in an amount not less than \$1,000,000.00 per accident for bodily injury and property damage. Said coverage shall include coverage for owned, leased and hired cars.

20.4 Worker's Compensation.

Coverage shall be maintained as required by the State of California.

20.5 Professional Liability.

"claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000.00 per claim.

20.6 Endorsements.

Consultant shall obtain endorsements to the automobile and commercial general liability with the following provisions:

20.6.1 The City (including its elected officials, officers, employees, agents, and volunteers) shall be named as additional insureds and shall waive all rights of subrogation and contribution it may have against the City and its respective insurers. .

20.6.2 For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be in excess of Consultant's insurance and shall not contribute with it.

20.7 Notice of Cancellation

Consultant shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to the City should the policy be cancelled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

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20.8 Authorized Insurers

All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the California Insurance Commissioner to transact business in the State of California.

20.9 Insurance Certificate

Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than ten (10) days after execution of this Agreement.

20.10 Substitute Certificates

No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Consultant shall provide a substitute certificate of insurance. In the event any of said policies of insurance are cancelled or amended, Consultant shall, prior to the cancellation or amendment date, submit new evidence of insurance in conformance with this Section to the City. No work or services under this Agreement shall commence until Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City.

20.11 Consultant's Obligation

Maintenance of insurance by Consultant as specified in this Agreement shall in no way be interpreted as relieving Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and Consultant may carry, at its own expense, such additional insurance as it deems necessary.

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21. Indemnification

Consultant shall indemnify, defend, and hold the City harmless (including its officials, officers, agents, volunteers, and employees) from and against any and all claims, demands, damages, liabilities, costs, and expenses (including court costs and attorneys' fees) resulting from or arising out of Consultant's performance of services under this Agreement.

a. Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the City Parties from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subcontractors (or any entity or individual for which Consultant shall bear legal liability) in the performance of or failure to perform any term, provision, covenant, or condition of professional services under this Agreement.

b. Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless the City Parties from and against any liability (including liability for claims, suits, actions, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, defense costs and expert witness fees) ("claims or liabilities"), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, but excluding any such claims or liabilities to the extent caused by the negligence or willful misconduct of the City Parties.

22. Consultant's Negligence/Misconduct

In the event that Consultant's negligence or misconduct results in damages to the City, Consultant shall, upon receipt of written notice from the City, either: (a) reimburse the City (Consultant's payment may be offset) for the damages incurred, or (b) re-perform (without additional compensation to Consultant) any services which have not been performed in accordance with the terms of the Agreement.

23. Compliance with Law

All work and services rendered by Consultant hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City of Carson and any federal, state or local governmental agency of competent jurisdiction.

24. Subconsultants

Any subconsultants to be used by Consultant in the performance of the scope of services shall be identified prior to commencing work under this Agreement and approved by the Contract Officer. Consultant shall be responsible to the District for the performance of its subconsultants as it would be if Consultant had performed those services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the District and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall defend and indemnify the City for any payment, fines or penalties assessed or threatened to be assessed against the City as a result of any claim brought by any subconsultant of Consultant for any matter arising from, or related to, the services performed by subconsultant under this Agreement. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of

law, without the prior written approval of the City . Any such prohibited assignment or transfer shall be void.

25. Standard of Care

Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence used by reputable professionals performing in the same or similar time and locality, under the same or similar circumstances.

26. Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and the City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns

27. Entire Agreement

This writing contains the entire agreement of the Parties relating to the subject matter hereof, and the Parties have made no agreements, representations, or warranties either written or oral relating to the subject matter hereof which are not set forth herein. Except as provided herein, this Agreement may not be modified or altered without formal amendment thereto, signed by both Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto affixed their names as of the day and year hereinabove first written.

"CONSULTANT"

HARRIS & ASSOCIATES

By: _____

John W. Harris, Esq.
Principal

"CITY"

CITY OF CARSON

By: _____

Jim Dear
Mayor

ATTEST:

Donesia L. Gause
City Clerk

APPROVED AS TO FORM:

City Attorney



EXHIBIT A

HARRIS & ASSOCIATES FEE SCHEDULE

| | | |
|--------------------|------------------|-----------|
| John W. Harris | Partner | \$ 300.00 |
| Adam Kargman | Senior Associate | 250.00 |
| Tara Mitcheltree | Senior Associate | 250.00 |
| Giselle V. Dhallin | Associate | 200.00 |
| Joseph Bribeaux | Paralegal | 100.00 |