



**Item #05-11-9
Consent**

Board of Directors

November 10, 2005

Agreement with McDonough Holland and Allen for Certain Legal Services

Issue: To review and approve an agreement with McDonough Holland and Allen for certain limited legal services.

Recommendation: The Administration Committee recommends that the Board of Directors approve the attached agreement with McDonough Holland and Allen to provide certain limited legal services.

Committee Action/Discussion: McDonough Holland and Allen has until recently been the general legal counsel for SACOG. There are several outstanding legal issues that are agreed should remain with the firm, such as the Shingle Springs project and an administrative issue. It is also beneficial that there be an agreement on file with McDonough Holland and Allen in the event that SACOG wishes to retain them for special project work at a future date.

Attached is the McDonough Holland and Allen Standard Terms and Agreement that identifies what the relationship would be and provides that it will be on an hourly basis. Ms. Harriet Steiner would be the lead counsel, and her billing rate is \$245 per hour. She has agreed to use paralegals where appropriate in order to keep the fees affordable for SACOG.

Approved by:

Mike McKeever
Executive Director

MM:KW:gg
Attachment

Key Staff: Karen Wilcox, Director of Finance, (916) 340-6210

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McDonough Holland & Allen PC
Attorneys at Law

Harriet A. Steiner
Attorney at Law

Sacramento Office
916.444.3900 tel
916.444.8334 fax
hsteiner@mhalaw.com

October 14, 2005

Karen Wilcox
Director of Finance
SACOG
1415 L Street, Ste. 300
Sacramento, CA 95814

RECEIVED
OCT 17 2005

Re: Legal Representation

Dear Karen:

Thank you for retaining McDonough Holland & Allen PC to represent the Sacramento Area Council of Governments in regards to audit issues, Shingle Springs issues and other legal services as requested.

My current billing rate is \$245.00 per hour. If I have the help of paralegals, their billing rates will be reflected in the bill we send you each month. the firm reviews its billing rates annually and makes periodic adjustments. We are happy to provide written notice of any such increases if you so request.

Attached to this letter are the Standard Terms of our representation. Please read these carefully and call me if you have any questions about them. The Standard Terms, along with the terms set forth in this letter, constitute the entire agreement for our representation, so by signing this letter you are agreeing to these terms. Please return the **original** letter in the enclosed envelope. You may keep the enclosed **copy** of this letter and Standard Terms for your records.

I have crossed off those sections of our Standard Terms and Agreement that are not applicable to our public agency clients. We do not require an advance against fees and therefore we cannot file a lien against the advanced fees.

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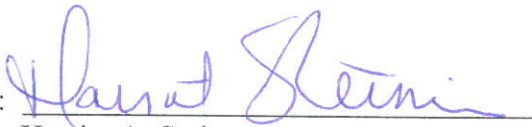
McDonough Holland & Allen PC
Attorneys at Law

Karen Wilcox
October 14, 2005
Page 2

Please call if you have any questions.

Very truly yours,

McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law

By: 
Harriet A. Steiner

HAS:map

Enclosure

The undersigned hereby approves the foregoing agreement for legal services, comprised of this letter and the accompanying Standard Terms.

Dated: _____



MHA Standard Terms & Agreement

This statement of standard terms, along with the terms stated in the accompanying letter, constitutes the Agreement for Legal Services ("Agreement") between you and McDonough Holland & Allen PC ("MHA").

1. Effective Date

The Agreement is effective the date we first performed services on your behalf. If we have performed legal services at your request while waiting for you to sign and return this Agreement, you will still be required to pay for those services even if you decide not to sign and return this Agreement.

2. Fees for Legal Services

Our fees for legal services are based on the total amount of time expended on all work necessary to your representation, multiplied by the hourly rate then in effect for the person performing the work. We charge for our time in minimum units of 0.1 hours. Our current hourly rates for attorneys, paralegals, and other personnel are reflected in the accompanying letter or on the billing statement. These rates are reviewed and adjusted periodically. If MHA revises its rates while this Agreement is in effect, the revised rates will be applied to the services rendered thereafter and the applicable rates will be reflected in each subsequent bill that you receive. From time to time, those assigned to work on your matter may need to confer among themselves concerning your rep-

resentation. When that occurs, each person will charge for the time expended in conference. It may on occasion be necessary or advisable for more than one person to attend a meeting, court hearing or other proceeding and each will charge for the time that is spent in making those appearances. We also will charge for waiting time in court and elsewhere and for all travel time both out of town and locally.

Time spent on the telephone discussing your matter, including telephone calls with you, also will be billed, as will conferences with others such as investigators, consultants, or experts.

3. Advance Against Fees

Before undertaking a representation, we may request the payment of an advance against fees and we may request the payment of additional advances from time to time thereafter. The initial deposit, as well as any future deposits, will be held in our trust account to be applied against the fees and costs that you incur.

Any fee deposits remaining at the conclusion of this representation after payment of all fees and costs will be returned to you.

Our billings will be made against this advance, which you will replenish in the amount of the monthly billing, within thirty (30) days of the date of that billing. Failure to replenish the advance against fees will be cause for MHA to withdraw from your representation.

4. Costs

We will incur on your behalf various costs and expenses in performing legal services under this Agreement. Miscellaneous expenses are covered by a standard administrative charge, currently set at 4%, which compensates the cost of normal photocopying, long distance telephone calls, regular mail postage, telecopy charges and other expenses as to which individual itemization is impractical. Costs specific to your matter such as investigation and filing fees, process server fees, required costs of travel, out-of-town lodging and meals, courier and express delivery and mail services, deposition and court reporter fees, computerized legal research, major photocopying, conference calls and staff overtime, as needed, are itemized and will appear on your monthly statement as separate items.

All costs and expenses are billed at our cost. In some instances, invoices for outside services will be sent directly to you for payment. You agree to pay the administrative charge and the costs itemized on your statements in addition to the hourly fees.

5. Billing Statements

We will send you statements on a regular basis for fees and costs incurred. In the usual case statements are sent to you once a month, reflecting work performed, date of the work, amount of time spent, and identity of

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the person performing the work along with a detail of costs the firm has incurred on your behalf. Payment of each statement will be due, in U.S. dollars, within 30 days of the statement's date.

Your failure to pay the full amount of the statement within 30 days of our billing will be cause for us to withdraw from your representation and pursue collection of your account. In that event, you agree to pay the costs of collecting the debt, including court costs, filing fees and reasonable attorneys' fees.

You agree to inform us in writing within 30 days if you question any part of a billing statement, and you agree that billing statements not questioned within that time are accurate.

6. Late Payment

In fairness to the majority of our clients who pay their bills promptly, we have established late-payment procedures designed to charge late payors the costs of carrying their overdue accounts. Payment is due within 30 days after the date on the billing statement. You agree to pay a late charge of 5% of the fees and costs incurred during the billing period covered by the billing statement to MHA if payment is not received within 30 days.

7. Client's Duties

You agree to be truthful with us, to cooperate, to keep us informed of developments that relate to our services, to abide by this Agreement, to pay our bills on time, and to keep us advised of your current address, telephone number and your place of employment and telephone number.

You also agree to respond promptly, fully and accurately to requests for information or documents and to other requests for assistance made by MHA.

8. Experts

To prepare or present your case or legal position, we may need expert witnesses, consultants, or investigators. We will select and engage them and you are responsible for their bills. When feasible we will consult with you before completing the engagement.

9. Settlement

If we are hired to pursue or defend a claim on your behalf, MHA will not settle the claim without your approval, and you have the absolute right to accept or reject any offer of settlement. We will notify you promptly of the terms of any settlement proposal that we receive on your behalf.

10. Liens

~~You grant to MHA a lien on any and all claims or causes of action that are the subject of our representation and on any advance against fees. Our lien is for any sums owing to us for any unpaid costs or attorneys' fees. The lien attaches to any recovery you obtain.~~

11. Disclaimer of Guaranty

MHA can make no promises or guarantees about the outcome of this representation. Our comments about the outcome of your matter are expressions of opinion only.

12. Cessation of Representation

You may discharge us at any time. We may withdraw with your consent or for cause, subject to an obligation to give you reasonable notice to arrange alternative

representation. "Cause" includes your failure to pay or other breach of this Agreement, refusal to cooperate with us or follow our advice on a material matter, or any fact or circumstance that would render our continuing representation unlawful or unethical.

After our services are concluded, we will, upon your request, deliver your file to you, along with any funds or property of yours in our possession.

13. Entire Agreement

This statement of standard terms and the letter to which it is attached constitute the entire agreement between you and MHA. No other agreement or statement made on or before the effective date of this Agreement is binding.

14. Severability

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and the rest of the Agreement will remain in effect.

15. Modification

This Agreement may be modified by subsequent agreement between you and MHA only by a writing signed by both parties.

16. Conflict Waiver

In a large firm with multiple offices representing public and private clients, actual or possible conflicts sometimes arise between existing or potential clients. We may be required to ask for a conflict waiver in that event. MHA asks for your understanding and cooperation if we request a conflict waiver in order to undertake or continue representation of another client in a manner that will not be specifically



detrimental or adverse to you in any matter in which another MHA attorney represents you.

17. Arbitration of Fee Dispute

If a dispute arises between you and MHA regarding attorneys' fees or costs under this Agreement and if MHA files suit, you have the right to stop the suit by timely electing to arbitrate the dispute under Business and Professions Code §§6200–6206, in which event MHA must submit the matter to arbitration.

18. California Law

This Agreement is deemed to be entered into at our principal office in Sacramento, California and shall be interpreted according to California law, excluding its conflict of laws provisions.

19. Negotiated Agreement

This is a negotiated agreement that can be accepted or rejected by the parties. The terms of the Agreement are not set by law. You may consult independent counsel before entering into this Agreement.

20. Additional Terms

The scope of MHA's representation in this matter is fully set forth in the letter which accompanies this Agreement as are any additional terms relating to this representation.

If, after initial representation, you decide to retain our services for other matters, and we agree to perform them, these Standard Terms shall apply.