

8943

CONTRACT

THIS CONTRACT is entered into on March 12, 2012, between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and RENNE SLOAN HOLTZMAN SAKAI LLP, Attorneys at law, doing business as RENNE SLOAN HOLTZMAN SAKAI LLP ("Attorneys"), who agree as follows:

WHEREAS, the City of Berkeley requires the services of an attorney to conduct an investigation of employees regarding allegations of illegal and improper conduct, and

WHEREAS, Attorneys are willing to be retained by the City in connection with said investigation; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Attorneys agree as follows:

1. **SCOPE OF SERVICES**

Attorneys designated herein will conduct an investigation and prepare a written report regarding allegations of employee misconduct. The investigation will be conducted by Jeffrey Sloan, Wendy Rouder and Brendan Tully.

2. **PAYMENT**

a. The City agrees to pay the designated attorneys at the following rate:

Jeffrey Sloan	\$350 per hour
Wendy Rouder	\$235 per hour

Non-attorney investigator:

Brendan Tully \$205 per hour (if approved in advance by the City of Berkeley)

b. Attorneys shall furnish monthly statements to the City Attorney of City showing the number of hours devoted to said matter/s and all expenses paid during said period. Said statements shall conform as closely as practicable to the format attached hereto as Exhibit A. City shall pay Attorneys the amounts shown thereon upon approval thereof by the City Attorney of the City as soon as possible after receipt of such statements. Payment for services by non-designated attorneys will be denied, unless approved in advance by the City Attorney or his delegate.

c. The entire fees and expenses pursuant to this Contract shall not exceed the amount of \$25,000 without amendment hereto. Attorneys shall not earn fees for services or incur expenses in excess of the aforesaid amount prior to executing with the City a written amendment to this contract increasing the amount payable hereunder. Attorneys shall notify the City as soon as practicable that a contract amendment increasing the amount payable may be necessary.

3. **TERM**

a. This Contract shall begin on the date it is executed by all parties and continue until Attorneys' services are no longer required by the City.

b. The City may terminate this Contract at any time upon five (5) days written notice to the other party. In the event of such termination, Attorneys will be paid a fee for services performed prior to the time of termination as specified in Paragraph 2 of this Contract, except that in no event will the amount paid exceed the full amount in Paragraph 2, as amended from time to time.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, registered mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Attorney
City of Berkeley
2180 Milvia Street, 4th Fl.
Berkeley, CA 94704

For purposes of this Contract, all notices to Attorneys shall be addressed as follows:

Jeff Sloan
350 Sansome Street, Suite 300
San Francisco, CA 94104

4. **INDEMNIFICATION**

Attorneys, for itself and its heirs, successors and assigns, agree to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions arising out of the negligent acts or willful misconduct in the performance of this Contract by Attorneys or its officers, employees, partners, directors, subcontractors or agents.

5. **CONFORMITY WITH LAW AND SAFETY**

a. Attorneys shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Attorneys must be in accordance with these laws, ordinances, codes and regulations. Attorneys shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Attorneys shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Attorneys

shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Attorney's subcontractor, if any; 3) name and address of Attorney's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

6. **NON-DISCRIMINATION**

Attorneys hereby agree to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Ch. 13.26 as amended from time to time. In the performance of this Contract, Attorneys agree as follows:

a. Attorneys shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Attorneys shall permit the City access to employment advertisements, blank application forms, EEO-1 forms, affirmative action plans and any other documents, which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Attorneys shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

7. **INDEPENDENT CONTRACTOR**

For purposes of this Contract and for the duration of this Contract, Attorneys shall be an independent contractor and not an employee of the City. The City shall not have the right to control when, where or how the service is rendered, but shall have the right to specify the results of the service rendered pursuant to this Contract.

8. **CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Ch. 3.64, neither Attorneys nor any employee, officer, director, partner or member of Attorneys, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Contract.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Attorneys, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Attorneys.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Ch. 3.64.

d. Immediately upon discovering a breach of this paragraph City may terminate this Contract. Additionally, City may deem Attorneys a non-responsible bidder for five (5) years from the date the Contract is terminated.

9. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

Unless a written exemption has been approved by the City Manager, the following provisions will apply for this agreement:

a. In accordance with Resolution No. 59,853-N.S., Attorneys certify that they have no contractual relations with, and agree during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. Appendix A to Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this Contract: Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang.

c. Attorneys' failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Attorneys due to a default under this provision, City may deem Attorneys a non-responsible bidder for five (5) years from the date this Contract is terminated.

10. **SETOFF AGAINST DEBTS**

Attorneys agree that City may deduct from any payments due to Attorneys under this Contract any monies that Attorneys owe City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

11. **NUCLEAR FREE BERKELEY**

Attorneys agree to comply with B.M.C. Ch. 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

12. **GOVERNING LAW**

The laws of the State of California shall govern this Contract.

13. **AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Attorneys.

14. **CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST**

The City's Conflict of Interest Code, Resolution No. 51,425-N.S., as amended, requires every consultant to disclose conflicts of interest by filing a Statement of Economic Interest (Form 730). Attorneys serving as consultants to the City under this Contract agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Contract.

15. **CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Attorneys have obtained a City business license as required by B.M.C. Ch. 9.04, and its license number is written below; or, Attorneys are exempt from the provisions of B.M.C. Ch. 9.04 and have written below the specific B.M.C. section under which it is exempt. Attorneys shall pay all state and federal income taxes and any other taxes due. **Attorneys certify under penalty of perjury that the taxpayer identification number written below is correct.**

Business License No. (pending)
Taxpayer Identification No.

16. **RECYCLED PAPER FOR WRITTEN REPORTS**

If Attorneys are required by this Contract to prepare a written report or study, Attorneys shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin papers, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Attorneys shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

17. **INSURANCE**

a. Attorneys shall maintain at all times during the performance of this Contract a professional liability insurance policy in the minimum amount of \$1,000,000 to cover any claims arising out of Attorneys' performance of services under this Contract. Attorneys shall provide an original Certificate of Insurance evidencing the required coverage.

b. If Attorneys employ any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City Attorney; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Risk Manager.

c. Attorneys shall forward all insurance documents to:

City Attorney
City of Berkeley
2180 Milvia St., 4th Floor
Berkeley, CA 94704

18. **BERKELEY LIVING WAGE ORDINANCE**

a. Attorneys hereby agree to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Attorneys will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Attorneys expressly acknowledge that, even if Attorneys are not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Attorneys to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, Attorneys shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Attorneys for health benefits, if any, for each of its employees providing services under the Contract. Attorneys agree to supply City with any records it deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 20.

c. If Attorneys are currently subject to the Berkeley Living Wage Ordinance, Attorneys shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Attorneys engages to execute its responsibilities under this Contract. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If Attorneys fail to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Attorneys' failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 3. In the event that City terminates Attorneys due to a default under this provision, City may deem Attorneys a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Attorneys may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an under-payment to an employee. It is mutually understood and agreed that Attorneys failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being

sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Attorneys' breach. City may deduct any assessed liquidated damages from any payments otherwise due Attorneys.

19. **BERKELEY EQUAL BENEFITS ORDINANCE**

a. Attorneys hereby agree to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Attorneys are currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Attorneys will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.

b. If Attorneys are currently or becomes subject to the Berkeley Equal Benefits Ordinance, Attorneys agree to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 20.

c. If Attorneys fail to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Attorneys' failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Attorneys under this provision, the City may deem Attorneys a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Attorneys may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Attorneys' failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Attorneys' breach. City may deduct any assessed liquidated damages from any payments otherwise due Attorneys.

20. **AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Attorneys' financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Attorneys agree to provide the City Auditor with reasonable access to Attorneys' employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Attorneys an opportunity to discuss and respond to any findings before a final audit report is filed.

21. **ENTIRE CONTRACT**

a. The terms and conditions of this Contract, all exhibits attached and any documents expressly incorporated by reference represent the entire Contract between the parties with respect to the subject matter of this Contract.

b. This Contract shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Attorneys. No other contract, statement, or promise relating to the subject matter of this Contract shall be valid or binding except by a written amendment to this Contract.

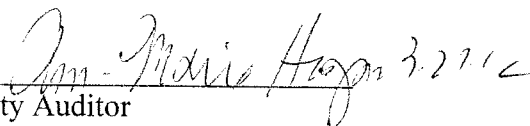
c. If any conflicts arise between the terms and conditions of this Contract and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Contract shall control.

IN WITNESS WHEREOF, City and Attorneys have executed this Contract as of the date written on the first paragraph of this Contract.


CITY OF BERKELEY

By: 
City Attorney


Registered by:


City Auditor

Attest:


for City Clerk

ATTORNEYS


By Jeffrey Sloan

Taxpayer Identification No.

Incorporated: Yes (X) No ()

Certified Woman Business Enterprise: Yes () No (X)

Certified Minority Business Enterprise: Yes () No (X)

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes () No (X)

EXHIBIT A - PAGE 1

SAMPLE INVOICE TO THE CITY OF BERKELEY

Date:

To: City of Berkeley
City Attorney's Office
2180 Milvia Street, 4th Floor
Berkeley, CA 94704

Attn: City Attorney Overseeing Matter

Re: Matter relating to this statement (i.e., case title, court and case number; or claimant and claim number).

Professional Services Rendered for the Period 4/1/92 to 4/30/92:

4/01/92	Consultation at Atty. Smith's Office (including travel time) at Atty. Jones (Associate Attorney) 3.0 hrs. @ \$50.00/hr.....	\$150.00
4/02/92	Investigation of Accident Site by Attorney Thomas 2.0 hrs. @ \$60.00/hr.....	\$120.00
4/03/92	Preparation of materials for testimony 5.0 hrs. @ \$60.00/hr.....	\$300.00
4/10/92	Deposition of John Doe and Mary Doe 1.0 hrs. @ \$60.00/hr.....	\$ 60.00

Expenses:

Mileage:	28 miles @ \$.25/mi.....	\$ 7.00
Parking:	4/02/92; 4/06/92; 4/08/92 (see receipts attached).....	\$ 4.25
Xeroxing:	60 copies @ \$.20 ea.	\$ 12.00
Telephone Calls:	Long distance to Williams in N.Y.; Atty. Smith in Walnut Creek (telephone bill attached).....	\$ 11.34

TOTAL	\$664.59
Previous Balance.....	-0-
AMOUNT DUE.....	<u>\$664.59</u>

Contract Total:	\$ _____
Total Amount billed including this invoice	\$ _____
Amount remaining on contract	\$ _____

EXHIBIT A - PAGE 2

**SAMPLE TRANSMITTAL MEMO WHEN SUBMITTING OUTSIDE SERVICES INVOICES
RETAINED BY YOUR OFFICE TO ASSIST IN CITY OF BERKELEY MATTER (To be
typed on your letterhead.)**

Date:

To: City of Berkeley
City Attorney's Office
2180 Milvia Street, 4th Floor
Berkeley, CA 94704

Attn: City Attorney Overseeing Matter

Re: Matter relating to statement (i.e., case title, court and case number; or claimant
and claim number)

ENCLOSURES:

1. Invoice from Erdman's for outside photocopying charges:
100 copies @ \$.25 ea.\$ 25.00
2. Statement from U.S. Messenger Service: \$14.00
3. Statement from U.S. Messenger Service: \$10.00\$ 24.00
4. Record of payment to Dr. Jones for Deposition\$200.00
5. Statement from Dr. Doe for Deposition.....\$150.00
6. Statement from Legal Beagle for service of Complaint\$ 12.00

COMMENT: Please pay directly to outside service for all original* invoices attached and pay
our firm directly for copies* of invoices attached (#4).

Signature

The City of Berkeley can pay outside services you may retain only if original statements
are attached to your transmittal letter. You may attach copies of invoices for services
rendered which you have already paid and we will reimburse your firm directly.