City of Brisbane
Agenda Report

TO: Mayor and City Council

FROM: Clay Holstine, City Manager

SUBJECT: Agreement for City Attorney

DATE: For Council Meeting on June 17, 2013.

Recommendation:

Authorize the Mayor to execute and Agreement for City Attorney Services with Renne Sloan Holzman Sakai, LLP

Background and Discussion:

After notification from City Attorney Hal Toppel of his intent to retire, the City Council began their search for a new City Attorney in the fall of 2012. A decision was made appoint a City Council Subcommittee to make recommendations to the full Council on a process to conduct the recruitment.

In October of 2012, the City Council approved a contract with Bobbi Peckham of Peckham & McKenney to assist with the recruitment.

A Request For Proposals (RFP) was drafted by the Subcommittee, approved by the City Council, and then mailed out to City Attorney's and Firms throughout the State. The City received 14 responsive RFP's.

The Subcommittee met several times with Ms. Peckham to conduct the initial screening of RFP's, with full Council concurrence along the way. Many interviews were conducted over several weeks, ultimately concluding with the City Council selection of Mr. David Kahn as City Attorney and Ms. Teresa Sticker as Deputy City Attorney. Both Mr. Kahn and Ms. Stricker are with the firm of Renne Sloan Holtzman Sakai, LLP (RSHS).

The attached contract was negotiated between the City and RSHS and is before the Council tonight for approval.

Clay Holstine, City Manager

AGREEMENT FOR

CITY ATTORNEY SERVICES

THIS AGREEMENT, dated _____month, _____date, _____year, is made and entered into by and between the City of Brisbane, a municipal corporation ("City"), and Renne Sloan Holtzman Sakai, LLP ("RSHS").

RECITALS

WHEREAS, the City desires to hire RSHS to provide contract City Attorney services; and

WHEREAS, the attorneys of RSHS are duly licensed under the laws of the State of California and have the necessary qualifications by reason of experience, preparation, and organization, and are fully qualified to discharge the duties of the office of City Attorney and to provide the services contemplated by this Agreement; and

WHEREAS, it is the desire of the parties to enter into this Agreement to establish the terms and conditions for providing City Attorney and special counsel services to the City.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Legal Services

RSHS's duties shall be that of City Attorney, as described generally in California Government Code §§ 41801-41805, and RSHS shall perform any and all basic City Attorney duties and functions entrusted to it by the City including, without limitation, attendance at meetings of the City Council and other City bodies as requested; providing legal advice on City matters to City staff; preparation of ordinances, resolutions, contracts, and other legal documents pertaining to City affairs; preparation of opinions regarding City matters as requested by appropriate City officials; and general municipal legal advice to all departments of the City. RSHS may, subject to mutual agreement, also provide special counsel services such as labor negotiations and representation of the City in litigation involving the City unless upon consultation with RSHS the City Council or City staff approved by the City Manager authorizes retention of separate counsel.

David Kahn shall be designated the City Attorney and shall be the primary attorney providing services under this Agreement. RSHS and City acknowledge and agree that availability and continuity of representation is an important factor in this Agreement, and that David Kahn shall strive to provide services similar to those of in-house counsel by making the City top priority. David Kahn will attend Council meetings, Commission and committee meetings as requested, and staff meetings as requested, and be available for Council and staff calls and emails unless on vacation or otherwise unavailable for good cause. The City will be provided reasonable notice of vacations. David Kahn will designate a Deputy City Attorney acceptable to the City to provide coverage if he is unavailable. David Kahn will be the coordinator of services provided to the

City with other attorneys of the firm or other outside counsel, as necessary. Teresa Stricker shall be designated the Deputy City Attorney.

Legal services will not include matters in which RSHS has a conflict of interest that precludes RSHS from representing City, members of the City Council, officers or employees of City. If RSHS has a conflict of interest or lacks expertise to handle a particular assignment, RSHS shall, following consultation with the City Manager, provide the City with a recommendation to hire outside counsel.

2. Compensation For Legal Services

In consideration for the provision of legal services, beginning June 17, , 2013, City shall compensate RSHS as follows: For Basic City Attorney services which shall include attendance at Council and other City meetings, regular office hours, provision of legal advice including email and phone calls, preparation of ordinances, resolutions, contracts and other standard legal documents, preparation of formal written opinions, , City shall pay to RSHS on an hourly basis $250 per hour. RSHS will not bill for time spent in routine travel from RSHS offices to City offices. RSHS will bill for travel time only when attending court appearances or meetings at destinations other than City offices.

For specialized services provided in connection with legal advice provided on non-routine labor negotiation matters and prosecution and defense of litigation and/or adjudicative or investigative proceedings, the City and RSHS may negotiate and agree to a separate rate. . For litigated cost recovery matters for which the City receives recovery of attorney fees from a 3rd party, for purposes of cost recovery the City shall use the standard hourly rates established by and as changed from time to time by RSHS.

3. Monthly Billings; Expense Reimbursements

RSHS shall bill the City on a monthly basis. Each bill shall indicate the date of the work done, the nature of the work that was accomplished, the attorney that performed the work, and the fee for the work.

The following out-of-pocket expenses will be separately itemized and included in bills to the City: (1) extraordinary operating expenses, including items such as messenger services, overnight mail charges, extraordinary copying, and computer-assisted research; (2) necessary travel and subsistence expenses for matters other than Basic City Attorney Services; (3) court costs, including filing fees, witness fees, and deposition and discovery costs not paid directly by the City. RSHS will waive its normal mileage expense, except for travel to court appearances or destinations other than City offices.

The City shall review and approve RSHS's monthly statements and pay RSHS for services rendered and expenses incurred at the rates and in the amounts provided in this agreement within 30 days of receipt of the monthly statements.

4. Amendment; Annual Review

This Agreement may be amended from time to time by written agreement of the parties. City and RSHS shall review the financial provisions in this Agreement on or about March 30 of each year to insure that its terms and conditions are acceptable to both parties.

The City Council will meet with the City Attorney on an annual basis in March of each year to provide a performance review and feedback. RSHS will not bill the City for time spent in connection with the annual performance review.

5. Termination

This Agreement may be terminated by City at any time upon thirty (30) days written notice to RSHS and by RSHS upon sixty (60) days written notice to City. In the event of termination, City shall be responsible only for fees and costs incurred as of the effective date of the termination.

6. Independent Contractor

RSHS is and shall at all times remain as to the City a wholly independent contractor. Neither the City nor any of its agents shall have control over the conduct of RSHS or any of RSHS employees or agents, except as herein set forth. RSHS shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the City. RSHS shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent.

7. Professional Liability Coverage

During the term of this Agreement, RSHS shall at all times maintain insurance coverage for professional liability. A copy of the policy shall be provided to the City upon request.

8. Indemnification

RSHS agrees to defend, indemnify and hold the City harmless from and against claims or liabilities arising out of the negligent errors or omissions of RSHS discharging its obligations under this Agreement, excluding claims or liabilities arising out of the City's active negligence or wrongful conduct.

9. Ownership Of Records; Retention Of Records

Upon termination of this contract, all reports, plans, documents, records, and data or certified copies of same prepared by RSHS pursuant to this Agreement shall become the property of City, excluding RSHS's internal accounting records and other documents not reasonably necessary to City's representation, subject to RSHS's right to make copies of any files withdrawn by City. Once a matter is concluded, RSHS will close the file. Under RSHS's document retention policy, RSHS normally maintains files for seven (7) years after a matter is closed, unless other arrangements are made with City. All City-supplied materials and all attorney end product (referred to generally as "City material") are the property of City. Attorney end product includes, for example, finalized contracts, pleadings, and trust documents. Attorney work product is the property of RSHS. Attorney work product includes, for example, drafts, notes, internal memoranda and electronic files, and attorney presentation and administration materials, including attorney-City correspondence and conflicts materials.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date written above.

CITY OF BRISBANE

By:_____

Raymond C. Miller, Mayor

RENNE SLOAN HOLTZMAN SAKAI

By:_____

David Kahn, Esq.

Partner