AGREEMENT FOR CITY ATTORNEY SERVICES

This Agreement for City Attorney Services is made by and between the City of San Carlos (City) and Gregory J. Rubens (Rubens).

WHEREAS, City issued a Request for Proposals on July 31, 2008 for City Attorney Services, which generally specified the City's needs in a City Attorney;

WHEREAS, City received several responses;

WHEREAS, the City Council selected Gregory J. Rubens (Rubens) to be its City Attorney and Rubens has accepted the appointment;

NOW, THEREFORE, the parties hereby agree as follows:

1. **Designation of City Attorney.** Rubens is hereby retained to provide legal services to the City, as its City Attorney, effective December 16, 2008. Rubens will supervise such other members of his law firm, who shall have at least four years of public/municipal law experience as a California-licensed attorney, to assist him in the performance of this Agreement, and to act as City Attorney when Rubens is unable to act due to illness, vacation or other reason, or when Rubens requires assistance. The parties acknowledge that because the relationship between a client and its attorney is only effective when the client has complete trust and confidence in the attorney, the City Council or the City Manager will have the authority to veto any attorney who Rubens selects to assist him in the performance of this Agreement.

2. **Duties of the City Attorney.** Rubens agrees to provide the legal services reasonably required to represent the City as its City Attorney, including:

   a. Attend all regular and special meetings of the City Council, City Council study sessions, and certain Planning Commission meetings as necessary, depending on the issues before the Planning Commission or as the City Manager or City Council may direct. During those meetings, provide advice and opinions with respect to all legal matters that may arise during any meetings, excepting, however, legal matters or proceedings wherein specialized legal services are to be provided by other legal counsel.

   b. Attend meetings of other boards, commissions, committees, or staff of the City, when requested to do so by the City Council or City Manager, at which time legal advice shall be given and opinions rendered. Rubens shall normally attend City staff meetings, which are generally held on a bi-weekly basis.

   c. Be present at City Hall for four hours per week in minimum two hour blocks or as mutually agreed.
d. Prepare resolutions, budgets, notices, contracts, ordinances, opinions, emails, letters, responses to tort claims and requests for public records, agendas, and other documents and papers necessary or appropriate in matters pertaining to the City, and examine for legal sufficiency all documents that City staff may submit to his for review.

e. Advise the City Council, agents and City staff employees on all general legal matters pertaining to the City, including the enforcement and interpretation of state and local laws and codes, including the City’s response to tort claims. The City Attorney shall use good faith efforts to provide routine legal advice and consultation to City staff on a “same day” basis via email, telephone, or in-person meetings, or correspondence.

f. Prepare a monthly report to the City Council, giving the current status of any legal action in which the City may be involved, including tort claims and code enforcement. The City Attorney shall comment in the report on any new legislation or court cases that may affect the City. The City Attorney shall be responsible for advising the City Council and staff regarding how to respond to these legislative or case law changes. Upon request of the City Council or City Manager, the City Attorney shall prepare memoranda, guidelines, resolutions, ordinances, administrative rules, or other procedures that he feels necessary for the City to comply with these changes in the law.

g. Provide legal services required in connection with the General Plan update, routine acquisition of land or easements, property disposals, public improvements, dedication, right-of-way abandonment, enforcement of City Codes, land use, zoning regulations and building standards.

h. Represent the City in all legal proceedings, whether civil or criminal, that are required to enforce the City’s ordinances. The City Attorney shall represent the City in legal proceedings and other litigation, to which the City is a party, except: when a conflict of interest exists; or when, in the opinion of the City Manager in consultation with the City Attorney, the need for specialized legal expertise makes the City Attorney’s representation inappropriate. In such situations, the City Attorney will be responsible for general oversight and for providing general legal assistance to the outside specialized legal counsel as appropriate. The City Attorney will not: participate in the negotiation process with the City’s employee organizations; administer or represent the City on workers’ compensation claims; administer or represent the City in general liability claims and litigation; or advise the Redevelopment Agency.

i. Upon the request of the City Council or City Manager, and Rubens’s agreement, Rubens will provide legal services in categories that are not listed in this Agreement. The parties shall confirm in writing those legal services.

3. **Compensation.** Rubens will be compensated for performing all of the services described above in section 2(a)–(g), including travel time and costs necessary to perform those services, at a flat fee in the amount of $9,000 a month. All services
described above in section 2 (h) and (i), and which are documented in writing as described in section 2(i), will be paid at the rate of $200 an hour. Provided that Rubens qualifies for membership in CalPERS, the City will pay the employer portion of Rubens’ CalPERS contribution. Rubens will be reimbursed for the following out-of-pocket costs and charges for services incurred in the performance of any legal services for the City: computerized legal research; messenger services, investigator and other similar fees. Except as expressly provided, Rubens shall pay for all overhead incurred in providing City Attorney services to the City, including, for example, office telephones, secretarial, bookkeeping, reception, postage, stationery, office supplies, insurance, library, copying, taxes, and licenses. Communications with the City or with other members of Rubens’s firm during which there is no substantive legal advice provided shall be a part of overhead costs. Rubens represents and agrees that these rates will remain in effect through June 30, 2010.

4. **Billing.** Rubens shall submit to the City Manager a monthly billing statement which shall include an itemized listing of the services performed during the previous month, the time spent to the tenth of an hour, and any costs or charges permitted in section 3 above. The City agrees to pay Rubens’ invoices within 30 days from receipt. Rubens will not bill the City for the attendance of more than one attorney at any meetings, hearings, depositions, and the like. In no event should Rubens bill the City for time spent training any member of Rubens’s firm. All time records pertaining to business transacted for the City shall be open to audit by the City Council, City Manager, or their designee.

5. **Performance Evaluation.** The City Council will endeavor to evaluate the work performance of Rubens on an annual basis using the form attached to this Agreement. No increase in compensation can occur unless Rubens receives an overall rating of “Meets Expectations.” A copy of the evaluation form that is currently in use is attached to this Agreement.

6. **Information Technology.** Rubens represents and warrants that he and his firm utilize Microsoft Office Suite software, including Word and Excel. Rubens agrees to maintain Internet services such that work product and files can be transmitted electronically between the City Attorney and City staff.

7. **Termination.**
   a. **By the City Council.** The City Council may terminate this Agreement at will and at any time for any reason by written notice. After receiving such notice, Rubens will cease providing services and will cooperate with the City in the orderly transfer of all related files, materials, work products, and records to the City. Rubens agrees that neither he nor his firm shall have any right to any files, materials, work product, or records that he prepares for the City under this Agreement, and that all such items belong to the City.
   b. **By Rubens.** Rubens may terminate this Agreement after giving the City 30 days’ written notice. If Rubens terminates this Agreement, the City agrees to provide a substitution of attorneys promptly and otherwise cooperate in effecting the
termination. Rubens understands and agrees that neither he nor any member of his firm has any constitutional or legally protected property or other interest in his appointment as City Attorney.

8. **Notices.** Any notice required to be given under this Agreement must be in writing and mailed to the parties at the following addresses: City: City Manager Mark Weiss, City of San Carlos, 600 Elm Street, San Carlos, CA 94070. Rubens: Gregory J. Rubens, Aaronson, Dickerson, Cohn & Lanzone, 939 Laurel Street, Suite D, P.O. Box 1065, San Carlos, California 94070.

9. **Independent Contractor.** Rubens and his law firm are engaged in an independent business and agree to perform the services provided for in this Agreement as an independent contractor and not as the agent, servant, officer or employee of the City. As an independent contractor, Rubens understands and agrees that he shall not be entitled to any salary, fringe benefits, workers’ compensation, sick leave, malpractice insurance, health or disability insurance, or other right or benefit connected with City employment, or any compensation other than as expressly provided in this Agreement. Rubens agrees that his firm is solely responsible for the payment of firm employees, including compliance with social security, withholding and all other regulations governing such matters. Rubens agrees that under no circumstances will he or his firm contest the independent contractor status of Rubens or other attorneys in his firm that Rubens assigns to work on City matters.

10. **Conflict of Interest.** Rubens agrees that neither he, nor any member of his firm who may work on City matters, has any current actual conflict of interest with the City’s interests. Rubens agrees that neither he nor any member of his firm who may work on City matters shall acquire any interest, direct or indirect, which would actually conflict in any manner or degree with the performance of his services to the City under this Agreement. Rubens acknowledges that he and the members of his firm he assigns to work on City matters are subject to various conflict of interest requirements found in California law, local ordinances, policies, and regulations.

11. **Indemnification.** Rubens and his firm agree to indemnify, defend and hold harmless the City, its City Council members, officers, agents, and employees from any and all claims or losses arising from the wrongful or negligent acts or omissions of Rubens or any person employed by Rubens or his firm in the performance of his Agreement.

12. **Insurance.** During all times this Agreement is in effect, Rubens shall maintain general liability and property damage insurance in the amount of $2 million per occurrence and $4 million aggregate; professional errors and omissions insurance in the amount of $1 million per occurrence and $1 million aggregate; workers’ compensation insurance in the amount of $1 million per accident; and automobile liability insurance in the amount of $1 million per occurrence and $1 million aggregate. Rubens shall provide proof of these coverages on January of each year to the City Manager.
13. **Amendments and Nonassignability.** This Agreement may be amended only in writing and only with the written consent of both parties. This Agreement may not be transferred or assigned.

14. **Waiver.** Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, and signed and dated by the parties.

15. **Arbitration Regarding Fees.** If a dispute between the City and Rubens arises over fees charged for services, the dispute will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, as described in California Business and Professions Code, sections 6200-6206. Each side will bear its own attorneys’ fees and costs, and no arbitrator or arbitration panel will have authority to award fees and costs.

16. **Entire Agreement, Full Understanding; Modifications in Writing.** This document contains the entire agreement about Rubens’s representation of the City, and supersedes any prior or contemporaneous agreements, representations or understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument. All executed copies are duplicate originals and are equally admissible in evidence.

18. **Authority.** The persons signing this Agreement represent that they hold the positions set forth below their signatures, and that they are authorized to execute this Agreement on behalf of their respective parties and to bind their respective parties thereto.

By: [Signature]
Gregory J Rubens, Partner
Aaronson, Dickerson, Cohn & Lanzone

Dated: December 14, 2008

By: [Signature]
Mark Weiss
City Manager, CITY OF SAN CARLOS

Dated: December 14, 2008
ATTEST:
By: Christine Boland
Christine Boland
City Clerk
CITY OF SAN CARLOS

APPROVED AS TO FORM:
By: Cynthia O'Neill
Cynthia O'Neill
LIEBERT CASSIDY WHITMORE
Attorneys for CITY OF SAN CARLOS

Dated: December 15, 2008

76881.1 SA422-001
78474.1 SA422-001
February 10, 2015

Gregory J. Rubens
Aaronson Dickerson Cohn & Lanzone
1001 Laurel St., Suite A
San Carlos, CA 94070

Re: Amendment to City Attorney Contract

Dear Mr. Rubens:

This letter summarizes the amendment to your contract for services as City Attorney as set by the City Council retroactive to January 1, 2015, approved by the City Council on February 9, 2015:

The City Attorney’s contract for City Attorney’s is amended to include:

1. A two percent (2%) increase to the City Attorney’s monthly retainer for ordinary services from $10,500/month to $10,710/month, retroactive to January 1, 2015.

2. Commencing January 1, 2016, an annual cost of living adjustment to the monthly retainer commensurate with the cost of living increase provided to the Management Unit.

3. A 2% increase in the hourly rate for litigation and special projects from $250/hr. to $255/hr., retroactive to January 1, 2015.

4. Commencing January 1, 2016, an annual cost of living adjustment to the hourly rate for litigation and special projects commensurate with the cost of living increase provided to the Management Unit.

5. All other terms and conditions shall remain the same as in the existing contract as it has been amended to date.

Very truly yours,

Ronald Collins, Mayor

Accepted,

Gregory J. Rubens, City Attorney
April 24, 2018

Gregory J. Rubens
Aaronson Dickerson Cohn & Lanzone
1001 Laurel St., Suite A
San Carlos, CA 94070

RE: Amendment to Compensation Provisions of the City Attorney’s Personal Services Contract

Dear Mr. Rubens:

This letter summarizes the amendment to the compensation provisions of your contract for services as City Attorney as approved by the City Council on April 23, 2018:

The City Attorney’s Contract for Personal Services is amended to include:

1. Effective July 1, 2018 the City Attorney’s monthly retainer, (not including PERS Employer’s share), will increase three percent (3%) from $11,706 to $12,058. The PERS employee’s share shall continue to be deducted from the retainer. The July 1, 2018 retainer increase is the same 3% increase as provided to the Management Group.

2. Commencing July 1, 2019, there will be an annual cost of living adjustment to the monthly retainer commensurate with the cost of living increase provided to the Management Group.

3. Except as provided in paragraph 5, there shall be no change in the basic hourly rates for litigation and special projects in the amount of $278 per hour for legal services until July 1, 2019.

4. Commencing July 1, 2019, an annual cost of living adjustment to the basic hourly rate for litigation and special projects will be provided commensurate with the cost of living increase provided to the Management Group.

5. For services related to development projects or litigation where the developer is required to reimburse the City for City Attorney time, (the “pass through hourly rate”), the pass through hourly rate for such services will be $400 for the City Attorney. Pass through hourly rates for Deputy City Attorneys assigned to such projects shall be determined by the City Attorney, which shall in no event be higher than the pass through hourly rate.

6. Commencing July 1, 2019, an annual cost of living adjustment to the pass through hourly rate for the City Attorney will be provided commensurate with the cost of living increase provided to the Management Group.
7. The City Attorney's Contract is modified to specifically include the following health and welfare benefits as part of his compensation:

   a. Longevity Benefit (Retiree med Calpers).
   b. CalPERS Minimum Health (Health Cerbt).
   c. Life Insurance commensurate with the Management Group Policies.

8. All other terms and conditions of the Contract as amended will remain the same.

Very truly yours,

Bob Grassilli, Mayor

Accepted:

Gregory J. Rubens, City Attorney
CITY OF SAN CARLOS
CITY ATTORNEY

MONTHLY BASE SALARY RATE

Effective 07/08/2019

<table>
<thead>
<tr>
<th>Classification</th>
<th>Monthly Base Salary</th>
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