



TO: Mayor and Councilmembers

FROM: Michael Jenkins, City Attorney

CONTACT: Winnie Cai, Assistant City Attorney

SUBJECT: Amendment No. 1 to Professional Legal Services Agreement with Best, Best & Krieger, LLP

RECOMMENDATION:

Authorize the City Manager to execute Amendment No. 1 to Professional Legal Services Agreement between the City of Goleta and Best, Best & Krieger, LLP for professional legal services for a term extension of one year ending June 30, 2020 and increase of contract authority by \$10,000.00 for a total amount not-to-exceed \$50,000, (Attachment 1).

BACKGROUND:

On February 20, 2018 City Council approved a professional legal services agreement between the City of Goleta and Best, Best & Krieger, LLP for legal services in conjunction with bankruptcy litigation involving Venoco. The professional legal services agreement was for a total amount not-to-exceed \$40,000, with a termination date of June 30, 2019.

DISCUSSION:

The bankruptcy case involving Venoco is near complete and Best, Best Krieger's legal representation of the City's interest in the ongoing litigation is still required. The City Attorney's Office recommends that the City amend the agreement with Best, Best and Krieger, LLP by extending the term by one year so that it terminates on June 30, 2020 and increasing the contract amount by \$10,000 for a total amount not-to-exceed \$50,000.

FISCAL IMPACTS:

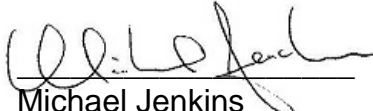
Funding for this professional legal services agreement has been encumbered from account 101-5- 1400-503.

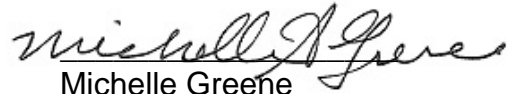
ALTERNATIVES:

The City Council can elect not to enter into the agreement and direct staff to return with an agreement with a different law firm.

Legal Review By:

Approved By:


Michael Jenkins
City Attorney


Michelle Greene
City Manager

ATTACHMENTS:

1. Amendment No. 1 to Professional Legal Services Agreement between the City of Goleta and Best, Best & Krieger, LLP.
2. Agreement No. 2018-015 for Professional Legal Services between the City of Goleta and Best, Best & Krieger, LLP (Available online only)

ATTACHMENT 1

Amendment No. 1 to Professional Legal Services Agreement between the City of Goleta and Best, Best & Krieger, LLP.

**AMENDMENT NO. 1
TO A PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
BEST, BEST & KREIGER, LLP**

This **Amendment No. 1** to a PROFESSIONAL SERVICES AGREEMENT by and between the **CITY OF GOLETA**, a municipal corporation ("City") and **BEST, BEST & KRIEGER, LLP**, ("Attorney") dated December 1, 2017 ("Agreement," Agreement No. 2018-015) is made this 18th day of June 2019.

RECITALS

WHEREAS, this Agreement is for professional legal services in conjunction with ongoing litigation involving Venoco; and

WHEREAS, the Agreement between City and Attorney currently provides in Section 3 Subsection (a) for the total compensation amount not to exceed forty thousand (\$40,000.00); and

WHEREAS, the parties desire to amend the Agreement so as to provide for additional compensation in the amount of ten thousand dollars (\$10,000.00) for continued professional legal services; and

WHEREAS, the Agreement between City and Attorney currently provides in Section 3 Subsection (a) for the rates and expenses to be binding until June 30, 2019; and

WHEREAS, the parties desire to amend the Agreement so as to extend the current rates and expenses of the Agreement to June 30, 2020; and

WHEREAS, the Agreement between City and Attorney currently provides in Section 5 for the termination of the Agreement on June 30, 2019; and

WHEREAS, the parties desire to amend the Agreement so as to extend the termination of the Agreement to June 30, 2020; and

WHEREAS, the Agreement did not provide for the Agreement or any amendments to be executed in counterparts by facsimile or electronic mail; and

WHEREAS, the parties desire to amend the Agreement to allow for execution of the Agreement and amendments by facsimile and electronic mail in order to expedite the finalization of the agreements; and

WHEREAS, the City Council approved this Amendment No. 1, on this _____ day of June 2019.

AMENDED TERMS

Now therefore City and Attorney agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of (\$10,000.00) and extend the rates and expenses expiration date by one year to read in its entirety:

- a) The total compensation payable to ATTORNEY by CITY for the services under this AGREEMENT SHALL NOT EXCEED the sum of \$50,000.00 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rate \$405 and with reimbursement to ATTORNEY for those expenses as referenced in subsection (d). The rates and expenses set forth in that exhibit shall be binding upon ATTORNEY until June 30, 2020.

- b) **Summary and Detailed Invoice.** ATTORNEY shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager.
- c) **Excluded Expenses.** ATTORNEY shall not invoice the CITY for routine copying, telephone, mileage, facsimile, word processing or routine electronic research, including California statutes and cases and Ninth Circuit cases.
- d) **Included Expenses.** ATTORNEY may invoice the CITY, without any mark-up, actual expenses for non-routine electronic legal research, parking, filing fees, transcripts, delivery charges, extraordinary copying and similar out-of-pocket expenses. These items will be separately designated on ATTORNEY's invoices as "disbursements" and will be billed in addition to the fees for professional services.
- e) **Travel and Subsistence.** ATTORNEY may invoice the CITY for actual costs incurred by ATTORNEY without any mark-up for transportation, lodging, meal and other travel costs at reasonable rates when necessarily incurred for the representation of the CITY. ATTORNEY may not invoice the CITY for ATTORNEY's hourly rate for time spent in transit.
- f) **Assignment of Attorneys.** ATTORNEY shall assign appropriate legal staff, with consent of the City Attorney, to represent CITY in the most efficient manner possible. ATTORNEY represents that all assigned members of legal staff have sufficient education and experience to provide competent and ethical legal representation to CITY. ATTORNEY shall not invoice CITY for time spent by members of legal staff to conduct research

on routine items or to garner experience and legal education. ATTORNEY shall provide proper oversight and guidance of assigned members. ATTORNEY shall not invoice CITY for supervision and guidance of an assigned member but may invoice CITY when collaboration between assigned members extends to providing additional representation of CITY and not routine supervision and guidance. When more than one member participates in the same meeting, hearing or conversation, ATTORNEY shall only invoice CITY fees for participation by one member.

- g) **Payment.** Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

2. **Section 5. TERM, PROGRESS AND COMPLETION** of the Agreement is amended to extend the term for an additional one year to read in its entirety.

The term of this Agreement is from the date first written above to June 30, 2020, unless the term of this Agreement is extended, or the Agreement is terminated as provided for herein.

3. **Section 28. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES** of the Agreement is added to include counterparts and electronic/facsimile signatures as follows:

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

4. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect

In concurrence and witness whereof, this Amendment No. 1 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

ATTORNEY

Michelle Greene, City Manager

Caroline Djang, Esq.

ATTEST:

Deborah Lopez, City Clerk

APPROVED AS TO FORM



Winnie Cai, Assistant City Attorney

ATTACHMENT 2

Agreement No. 2018-015 for Professional Legal Services between the City of Goleta
and Best, Best & Krieger, LLP.



Agreement No. 2018-015

Project Name: Legal Litigation Services

**AGREEMENT FOR PROFESSIONAL LEGAL SERVICES
BETWEEN THE CITY OF GOLETA
AND
BEST, BEST & KREIGER, LLP.**

This AGREEMENT FOR PROFESSIONAL LEGAL SERVICES (herein referred to as "AGREEMENT") is made and entered into this 1st day of December, 2017, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **BEST, BEST & KRIEGER, LLP.**, (herein referred to as "ATTORNEY").

WHEREAS, the CITY has a need for outside professional legal services; and

WHEREAS, the CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and

WHEREAS, the ATTORNEY was selected based on its expertise in the legal services needed and are duly licensed under the laws of the State of California to provide the legal services contemplated by this Agreement; and

WHEREAS, the City Council, on this 20th day of February, 2018, approved this AGREEMENT and authorized the City Manager to execute this AGREEMENT.

CITY and ATTORNEY agree as follows:

1. RETENTION AS ATTORNEY

CITY hereby retains ATTORNEY, and ATTORNEY hereby accepts such engagement, to perform the services described in Section 2. ATTORNEY represents it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by ATTORNEY are as follows:

Professional legal services to the City of Goleta in conjunction with ongoing litigation with Venoco. Services shall generally include those matters set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

3. COMPENSATION AND PAYMENT

(a) The total compensation payable to ATTORNEY by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$40,000.00 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rate \$405 and with reimbursement to ATTORNEY for those expenses as referenced in subsection (d). The rates and expenses set forth in that exhibit shall be binding upon ATTORNEY until June 30, 2019.

(b) **Summary and Detailed Invoice.** ATTORNEY shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager.

(c) **Excluded Expenses.** ATTORNEY shall not invoice the CITY for routine copying, telephone, mileage, facsimile, word processing or routine electronic research, including California statutes and cases and Ninth Circuit cases.

(d) **Included Expenses.** ATTORNEY may invoice the CITY, without any mark-up, actual expenses for non-routine electronic legal research, parking, filing fees, transcripts, delivery charges, extraordinary copying and similar out-of-pocket expenses. These items will be separately designated on ATTORNEY's invoices as "disbursements" and will be billed in addition to the fees for professional services.

(e) **Travel and Subsistence.** ATTORNEY may invoice the CITY for actual costs incurred by ATTORNEY without any mark-up for transportation, lodging, meal and other travel costs at reasonable rates when necessarily incurred for the representation of the CITY. ATTORNEY may not invoice the CITY for ATTORNEY's hourly rate for time spent in transit.

(f) **Assignment of Attorneys.** ATTORNEY shall assign appropriate legal staff, with consent of the City Attorney, to represent CITY in the most efficient manner possible. ATTORNEY represents that all assigned members of legal staff have sufficient education and experience to provide competent and ethical legal representation to CITY. ATTORNEY shall not invoice CITY for time spent by members of legal staff to conduct research on routine items or to garner experience and legal education. ATTORNEY shall provide proper oversight and guidance of assigned members. ATTORNEY shall not invoice CITY for supervision and guidance of an assigned member, but may invoice CITY when collaboration between assigned members extends to providing additional representation of CITY and not routine supervision and guidance. When more than one member participates in the same meeting, hearing or conversation, ATTORNEY shall only invoice CITY fees for participation by one member.

(g) **Payment.** Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel

classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by ATTORNEY shall be accomplished under the general direction of, and coordinate with, CITY's City Attorney, as that staff person is designated by CITY from time to time, and who presently is Michael Jenkins, Interim City Attorney. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

5. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT commences from the date first written above and terminate on June 30, 2019.

6. OWNERSHIP OF DOCUMENTS

All files (other than ATTORNEY's drafts, notes and internal memorandum), including duplication of same prepared by ATTORNEY in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY.

7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONSULTANT

This AGREEMENT is for professional services which are personal to CITY. Caroline Djang, Esq. is deemed to be specially experienced and is a key member of ATTORNEY's firm, and shall be directly involved in performing, supervising or assisting in the performance of the professional services. This key person shall communicate with, and periodically report to, CITY on the progress of the professional services. Should any such individual be removed from assisting in the contracted professional services for any reason, CITY may terminate this AGREEMENT. This AGREEMENT is not assignable by ATTORNEY without CITY's prior consent in writing.

8. HOLD HARMLESS AND INDEMNITY

Defense and Indemnity of Third Party Claims/Liability. With respect to liability other than that arising out of professional services, ATTORNEY shall indemnify defend, and hold harmless CITY, its officers, and employees from and against any and all damages, liability, judgments, losses and expenses including, but not limited to, attorneys' fees, including damages arising from injuries or death of persons and damage to property which arise from, or are connected with, or caused by the negligent acts, errors or omissions of ATTORNEY.

9. INSURANCE

ATTORNEY shall, at ATTORNEY's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating level of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its equivalent and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- b) Insurance Services Office form number CA 0001 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional Liability insurance on a policy form appropriate to ATTORNEY's profession. Limits shall be no less than \$5,000,000 per claim.

Liability insurance policies required to be provided by ATTORNEY hereunder shall contain or be endorsed to contain the following provisions:

- a) CITY, its employees and officials, shall be covered as additional insureds, excepting Professional Liability and workers compensation insurance. Coverage shall apply to liability arising out of the negligent performance of the professional services provided under this AGREEMENT. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10 , or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37 with an edition date prior to 2004.
- b) ATTORNEY's insurance shall apply to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c) General liability coverage shall be primary and non-contributing with any insurance maintained by CITY.

- d) Evidence of coverage shall be endorsed onto the policy (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- e) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit ATTORNEY, or ATTORNEY's employees, or agents, from waiving the right of recovery prior to a loss. ATTORNEY waives its right of recovery against CITY.
- f) ATTORNEY agrees to deposit with CITY certificates of insurance and required endorsements.
- g) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by ATTORNEY hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by ATTORNEY or CITY will withhold amounts sufficient to pay premium from ATTORNEY payments.
- h) ATTORNEY agrees to provide immediate notice to CITY of any claim or loss against ATTORNEY arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

10. RELATION OF THE PARTIES

The relationship of the parties to this AGREEMENT shall be that of independent contractors and that in no event shall ATTORNEY be considered an officer, agent, servant or employee of CITY. ATTORNEY shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

11. TERMINATION BY CITY

CITY, by notifying ATTORNEY in writing, may terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, ATTORNEY shall have the right and obligation to immediately assemble work in

progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to ATTORNEY within 30 days following submission of a final statement by ATTORNEY unless termination is for cause. In such event, ATTORNEY shall be compensated only to the extent required by law.

12. TERMINATION BY ATTORNEY

ATTORNEY, by notifying CITY in writing, may upon thirty (30) calendar days' notice, terminate this AGREEMENT.

13. CONFLICT OF INTEREST

ATTORNEY is unaware of any CITY employee or official that has a financial interest in ATTORNEY'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, ATTORNEY shall not offer, encourage or accept any financial interest in ATTORNEY'S business by any CITY employee or official.

14. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

15. MITIGATION OF DAMAGES

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

16. GOVERNING LAW

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

17. RESOLUTION OF FEE DISPUTES

In the event of a fee dispute arising out of or relating to this AGREEMENT or the services to be rendered hereunder, CITY and ATTORNEY agree to attempt to resolve such fee disputes in the following manner:

(1) Through direct negotiations between the appropriate representatives of each party.

(2) If such negotiations are not successful, the parties agree to resolve any remaining dispute through formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties.

(3) If the dispute remains unresolved after the above steps are taken, the parties may submit the matter to binding arbitration in Santa Barbara County pursuant to the arbitration rules of the Santa Barbara County Bar Association for legal fee disputes. In the event that the City chooses not to utilize the Santa Barbara County Bar Association's arbitration procedures, the City agrees that any disputes submitted to binding arbitration in Santa Barbara shall be conducted by the American Arbitration Association in accordance with its commercial arbitration rules.

18. TAXPAYER IDENTIFICATION NUMBER

ATTORNEY shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

19. NON-APPROPRIATION OF FUNDS

Payments due and payable to ATTORNEY for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of ATTORNEY services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

20. MODIFICATION OF AGREEMENT

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and ATTORNEY.

21. USE OF THE TERM "CITY"

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

22. PERMITS AND LICENSES

ATTORNEY, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates, including a California Bar registration, that may be required in connection with the performance of services under this AGREEMENT. It is specifically stipulated that services provided under this

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA



Winnie Cai, Deputy City Attorney

ATTORNEY



Caroline Djang, Esq.

Exhibit A
Scope of Work

ATTORNEY shall assign professionals to complete the assigned tasks who have the requisite level of skills, education required by any professional to be able to complete the assigned takes. ATTORNEY shall assign professional in a cost effective manner, utilizing Senior Attorney's, Associates or Paralegals / Legal Assistants when it would result in cost saving to the CITY. CITY shall not be responsible for multiple professionals performing the same tasks, whether preparing for or attending meetings, depositions or hearings or file familiarization.

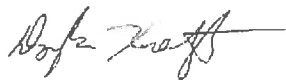
ATTORNEY shall maintain full and complete files for all work performed for the CITY. Such files shall be made available to City for inspection at any time. Upon completion of the services or termination of this AGREEMENT, ATTORNEY shall promptly deliver such files to CITY. ATTORNEY shall provide electronic copies of actual correspondence and court filings to CITY as such files are received or delivered.

ATTORNEY shall identify the City Attorney as co-counsel of record on any and all litigation matters.

ATTORNEY shall timely prepare such status reports as may be requested by CITY. ATTORNEY shall appear at the City Council meetings as requested to brief the City Council on such status reports.

CERTIFICATE OF INSURANCE

<p>PRODUCER</p> <p>USI Affinity One International Plaza, Suite 400 Philadelphia, PA 19113</p>	<p>This Certificate is issued as a matter of information only and confers no rights upon the Certificate Holder. This Certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the Certificate Holder.</p>	
<p>INSURED</p> <p>Best Best & Krieger LLP 3880 Lemon Street, Suite 110 Riverside, CA 92501</p>	<p>COMPANY AFFORDING COVERAGE</p> <p>Lloyds of London Paragon International Insurance Brokers, Ltd. 140 Leadenhall Street London, England EC3V 4QT</p>	
<p>This is to certify that the policy of insurance listed below has been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy. Limits shown may have been reduced by paid claims.</p>		
<p>TYPE OF INSURANCE</p> <p align="center">LAWYERS ERRORS AND OMISSIONS INSURANCE</p>		
<p>POLICY NUMBER</p> <p>LDUSA1700774</p>	<p>EFFECTIVE DATE</p> <p>09/01/2017</p>	<p>EXPIRATION DATE</p> <p>09/01/2018</p>
<p>LIMITS OF LIABILITY</p> <p>at least \$5,000,000 any one claim and in the annual aggregate including claims expenses.</p>		
<p>CERTIFICATE HOLDER</p> <p>City of Goleta 130 Cremona Drive Goleta, CA 93117</p>	<p>CANCELLATION</p> <p>Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.</p>	



Signature of Authorized Representative

January 22, 2018
Date