

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES
BETWEEN
THE CITY OF LOS ANGELES
AND
KUTAK ROCK LLP

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

THIS AGREEMENT, Contract Number _____, is made and entered into by and between the City of Los Angeles ("City"), a municipal corporation, acting through the Board of Harbor Commissioners and the Office of the City Attorney ("City Attorney"), and Kutak Rock LLP, a limited liability partnership, located at 1801 California Street, Suite 3000, Denver, CO 80202-2626 ("Outside Counsel"), with reference to the following:

RECITALS

WHEREAS, the City Attorney and the Los Angeles City Council have approved the use of Outside Counsel to assist the City Attorney with bond and disclosure counsel services; and

WHEREAS, Outside Counsel indicates that it has the expertise and competence to perform the professional legal services sought by the City; and

WHEREAS, the City Attorney has selected Outside Counsel to provide assistance in such matters. Outside Counsel is willing to provide such assistance and represents to the City that it is able to do so without a conflict of interest; and

WHEREAS, the professional legal services to be performed by the Outside Counsel are of an expert and technical nature and are temporary and occasional in character.

NOW, THEREFORE, in consideration of the promises, covenants, terms and conditions contained herein, the parties hereby covenant, agree and represent as follows:

I. SCOPE OF REPRESENTATION AND PARTNERING

Outside Counsel is retained to assist the City Attorney in providing bond and disclosure counsel services for the City of Los Angeles acting by and through its Board of Harbor Commissioners. Outside Counsel shall at all times work under the direction of the City Attorney. The City and City Attorney shall rely on the competence, expertise and experience of Outside Counsel. At all times, Outside Counsel shall provide professional legal advice and services at the highest level expected of law firms providing legal services in the Los Angeles region. This is a non-exclusive agreement to provide legal services to the City and, at the City Attorney's discretion, the City may augment the services with another law firm or law firms or select to terminate Outside Counsel's services in a manner consistent with this Agreement.

City Attorney and Outside Counsel recognize and agree that an important purpose of this Agreement is to promote effective collaboration between City Attorney and Outside Counsel so that, among other things, City Attorney is able to gain familiarity with the legal issues presented in these matters and for Outside Counsel to impart substantive subject matter knowledge to City Attorney's lawyers. To this end, City Attorney and Outside Counsel both agree to make reasonable efforts to coordinate their efforts and work.

II. GENERAL CONDITIONS

A. Period of Performance

This Agreement shall begin on **SEPTEMBER 19, 2019** and shall continue until

SEPTEMBER 18, 2022 unless terminated earlier under the provisions of this Agreement.

B. Termination or Suspension of Legal Services

1. Termination/Suspension For City's Convenience

a) Services performed under this Agreement may be terminated or suspended in whole or in part at any time by City Attorney. City Attorney shall terminate or suspend services by delivering to Outside Counsel a written notice specifying the extent to which services are terminated or suspended and the effective date of such termination or suspension.

b) After receiving a notice of termination or suspension, unless otherwise directed by City Attorney, Outside Counsel shall:

- 1) Stop services on the date and to the extent specified in the notice or as soon as practicable under the laws and rules of ethics; and
- 2) Continue to perform services not terminated or suspended by the notice; and
- 3) Submit final billing for services rendered through the time of termination no later than thirty (30) calendar days from the effective date of termination; and
- 4) If Outside Counsel fails to submit a final billing within the time allowed, City Attorney may determine the amount, if any, to be paid to Outside Counsel. Outside Counsel agrees that City Attorney's determination shall be final.

2. Termination For Outside Counsel's Default

a) Services performed under this Agreement may be terminated in whole or in part by City Attorney upon a default by Outside Counsel. Under this Agreement, Outside Counsel will be deemed in default if Outside Counsel:

- 1) Fails to perform the service(s) within the specified time period; or
- 2) Fails to perform any of the provisions contained in this Agreement; or
- 3) Fails to make adequate progress in the matter and endangers the performance of this Agreement's terms.

b) If City Attorney wholly or partially terminates services under this Agreement, City Attorney may obtain alternative legal services with terms and in a manner City Attorney deems appropriate.

3. Termination Due to Non-Appropriation of Funds

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board of Harbor Commissioners of the City of Los Angeles, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board of Harbor Commissioners does not appropriate funds therefore. The Outside Counsel is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board of Harbor Commissioners.

Although the Outside Counsel is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Outside Counsel agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefore is approved by the Board of Harbor Commissioners within that 60 day period. The Outside Counsel is responsible for maintaining all insurance and bonds during this 60 day period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board of Harbor Commissioners for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

4. Closing Report Upon Termination

- a) If requested by City Attorney, Outside Counsel shall deliver a Closing Report within seven days of the termination of services. The Closing Report shall include, but is not limited to:
 - 1) A brief description of the terms of any proposed Financing;
 - 2) A discussion of applicable law;
 - 3) A description of the status of the any non-transactional bond services; and
 - 4) A list and description of schedules for any proposed Financing.
- b) Outside Counsel shall give City Attorney all evidence, files and attorney work product for every matter in which Outside Counsel is substituted out as bond counsel. This includes any computerized indices, programs and document retrieval systems created or used for the matter.

C. Independent Contractor Status

This Agreement is between City and Outside Counsel and is not intended, and shall not be construed, to create, as between City and Outside Counsel, the relationship of agent, servant, employee, partnership, joint venture or association. Outside Counsel understands and agrees that all Outside Counsel personnel furnishing services to City under this Agreement are employees solely of Outside Counsel and not the City. Outside Counsel shall bear the sole responsibility and liability for furnishing workers' compensation benefits to

any Outside Counsel personnel for injuries arising from services performed under this Agreement.

D. Ownership of Documents

All information, documents, records, reports, data, or other materials furnished to Outside Counsel or other such information, documents, records, data or other materials to which Outside Counsel has access during their performance pursuant to this Agreement are deemed confidential and shall remain the property of City. Outside Counsel shall not make use of such items for any purpose unrelated to the matter involved herein and shall not make oral or written disclosure thereof, other than as necessary for their performance hereunder, without the prior written approval of City Attorney.

E. Indemnity for General Liability

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Outside Counsel's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Outside Counsel or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

F. Indemnity for Professional Liability.

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses, of any nature whatsoever, which may be sustained or suffered by or secured against the City, its Boards, Officers, Agents, Employees, Assigns and Successors in Interest by reason of any damage to property, injury to persons, or any action that may arise out of the performance of this Agreement that is caused by any act, omission, or negligence of Outside Counsel.

G. Insurance

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article IX, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(1) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(2) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(3). Workers' Compensation and Employer's Liability

Outside Counsel shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Outside Counsel shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. If requested, Outside Counsel shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Outside Counsel, and for all employees of any subcontractor or other vendor retained by Outside Counsel.

(4). Professional Liability Insurance

Outside Counsel is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Outside Counsel certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board. Notice of occurrences of claims under the policy shall be made to the City Attorney's office with copies to Risk Management

H. Carrier Requirements

All insurance which Outside Counsel is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

I. Notice of Cancellation

Outside Counsel will provide the Board of Harbor Commissioners with as much prior written notice as possible before any insurance policy described above shall be cancelled or reduced in coverage. Notice shall be made by registered mail addressed to Attention: Risk Manager 425 S. Palos Verdes Street, San Pedro, California 90731.

J. Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Outside Counsel.

K. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall direct their insurance broker or agent to submit to the City's online insurance compliance system **Kwikcomply**™ at <http://kwikcomply.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. In the alternative, if outside counsel is unable to provide the insurance certificates within the required time frame, then it must provide the insurance certificates as soon as they are available, and such certificates must reflect a continuous coverage with no break in coverage. If Outside Counsel neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be deducted from the next payment due Outside Counsel.

L. Right to Self-Insure

Upon written approval by the Executive Director, Outside Counsel may self-insure if the following conditions are met:

1. Outside Counsel has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Outside Counsel must have a formal resolution of its board of directors authorizing self-insurance.

2. Outside Counsel agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Outside Counsel agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Outside Counsel agrees that any insurance carried by Department is excess of Outside Counsel's self-insurance and will not contribute to it.
5. Outside Counsel provides the name and address of its claims administrator.
6. Outside Counsel submits a Financial Statement or Balance Sheet prior to Executive Director's consideration of approval of self-insurance and annually thereafter evidence of financial capacity to cover the self-insurance.
7. Outside Counsel agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Outside Counsel has complied with all laws pertaining to self-insurance.

M. Governing Law

The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of California and any action brought by either party on this Agreement shall be brought in the Los Angeles County Central District Superior Courts.

N. Validity

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

O. Waiver

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any future breach of the provision or any breach of any other provision of this Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

P. Remedies Reserved to City

The remedies reserved to City shall be cumulative and additional to any other remedies provided in law or equity.

Q. Authorization for Warranty

Outside Counsel represents and warrants that the signatory(ies) to this Agreement is fully authorized to obligate Outside Counsel and that all corporate acts necessary to the execution of this Agreement have been accomplished.

R. Changes and Written Amendment of Terms

Material changes to this Agreement shall only be effective upon the execution of a mutually-approved written amendment.

S. Business Tax Registration Certificate

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate (BTRC) and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Los Angeles Harbor Department ("Department"). Outside Counsel declares that its authorized BTRC is: **660383-0001-7**. See Exhibit "E". No payments will be made under this Agreement without a valid BTRC.

III. OUTSIDE COUNSEL'S SERVICES AND RESPONSIBILITIES

A. Professional Ethics and Conflicts of Interest

City recognizes that Outside Counsel may have clients that, from time to time, may have interests adverse to City. Any such representation shall be in accordance with the ethical duties of members of the State Bar of California including, without limitation, those established by the Bar's Rules of Professional Conduct. Outside Counsel shall send written notice to City Attorney Conflicts Attorney of any actual or potential conflict of interest that exists during Outside Counsel's engagement under this Agreement. The request for waiver shall describe in detail the nature of the proposed engagement by Outside Counsel, the nature of the conflict, and why Outside Counsel believes a waiver is appropriate.

B. Key Outside Counsel Personnel

1. Outside Counsel's Supervising Attorney for this Agreement shall be **Michael Reppe**. Outside Counsel's Supervising Attorney shall not be changed without City Attorney's written authorization.
2. Outside Counsel's Supervising Attorney shall have full authority to act for Outside Counsel on all daily operational matters under this Agreement and shall serve as or designate Lead Counsel for all bond counsel matters performed pursuant to this Agreement. Designation of a Lead Counsel other than the Supervising Attorney shall be subject to City Attorney's prior written approval.

C. Legal Representation

1. Outside Counsel shall provide City with the necessary representation by qualified staff at the least costly billing category. The names of personnel authorized to provide services under this Agreement and the hourly rates for each staff member are listed in the document entitled, "KUTAK ROCK LLP ATTORNEY FEE SCHEDULE" attached hereto and incorporated herein as Exhibit "B" to this Contract. The specific hourly rate for authorized timekeeper is listed in Exhibit "B".

Any use of personnel other than as enumerated shall be subject to the prior written approval of City Attorney's Supervising Attorney. Outside Counsel may hire consultants, but only with the prior written approval of City Attorney's Supervising Attorney. Outside Counsel may retain other law firms or attorneys as subcontractors to provide the legal services covered by this Agreement, but only with the prior written approval of the Chief Deputy City Attorney. Any such written approval of subcontractors must set forth the name of each approved attorney or other personnel and the agreed rate for such individual. Outside Counsel will require any such subcontractors or consultants to comply with the terms and conditions of this Agreement and will indemnify, defend and forever hold harmless the City from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of any act or omission of any such subcontractors or consultants.

2. Outside Counsel's performance as bond counsel shall include, but not be limited to, the following services:

a) Assist City and City Attorney with the drafting of all necessary documents and examining all proceedings for the issuance, sale, execution and delivery of the Department's Revenue Bonds. Such bonds may include Harbor Department Revenue Bonds or Refunding Revenue Bonds, Department Tax Exempt Commercial Paper, other evidences of indebtedness, and other obligations of the Department, including lease or installment payments in support of certificates of participation, collectively referred to as the "Bonds" which the Department may sell from the effective date of this Agreement to the termination date of this Agreement as provided for herein, pursuant to the proceedings taken and to be taken under Article VI of the City Charter and any other applicable laws. Such documents shall include, but not be limited to, new bond resolutions and /or supplemental indentures as may be necessary in connection with the issuance of the Bonds. Outside Counsel shall (i) prepare the summary of legal documents, the summary of federal and California state income tax matters to appear in the offering documents for the Bonds and the continuing disclosure agreement or certificate as may be required under federal securities laws; (ii) draft all necessary competitive sale documents, bond purchase agreement bold resolution(s), closing memorandum and closing documents including necessary Tax Compliance Certificate) related to the Bonds (iii) assist the City Attorney and the City Attorney's Office for the Department in reviewing the offering document for the Bonds;

b) Examine and provide advice regarding the constitutions of the State of California and the United States, the Charter of the City of Los Angeles and all

other laws, statutes, regulations, SEC rule and judicial opinions relevant to or in any way affecting the issuance, sale, execution and delivery of the Bonds;

c) Be present at the sale or delivery of said Bonds, working group meetings for the purposes of preparing and reviewing the various financing documents, including the official statement pertaining to the Bonds, and at any informal meeting or meetings with rating agencies or prospective purchasers prior to the sale of said Bonds;

d) Express, in writing, the opinion or opinions of Outside Counsel as to whether or not said Bonds, if executed and delivered pursuant to said proceedings, will constitute valid and legally binding obligations of the Department payable out of the appropriate sources of revenue as prescribed in said Bonds;

e) Express, in writing, the opinion or opinions of Outside Counsel (i) that interest on any Bonds issued as tax-exempt Bonds is executable from gross income for federal income tax purposes of the United States of America under present federal income tax laws, and that such interests also exempt from personal income taxes of the State of California under present state income tax laws; and (ii) that the information in the offering document or official statement pertaining to the Bonds, the security therefore and the tax treatment of interest thereon present a fair and accurate summary of the provisions of the bonds and financing documents. Outside Counsel shall prepare and shall approve the forms of Tax Compliance Certificates and any other tax certificates and forms to be made a part of the Bond record;

f) Provide for the delivery of the final opinion or opinions of Outside Counsel upon payment and delivery of the Bonds and if deemed necessary by the City Attorney's Office for the Department for such purpose, be represented at the delivery of said Bonds;

g) In the event the Bonds are issued and at the time of payment are delivered in temporary form, Outside Counsel shall provide the Board from time to time with their opinion covering definitive bonds of such issues exchanged for such temporary bonds or confirm that such definitive bonds are covered by the opinion delivered with the temporary bonds;

h) Within sixty days of closing, prepare such number of original sets of the transcript of proceedings relating to the issuance of the Bonds as shall be reasonably required by the Department;

i) Providing informal continuing educational opportunities regarding various municipal finance areas (e.g. continuing disclosure requirements, changes in regulatory laws and rules, etc.) for the City Attorney's Office and Department staff;

j) Upon request of the City Attorney's Office for the Department, perform such other general corporate work as may be necessary to answer questions reasonably related to questions involving Department bonds outstanding or the

issuance of new bonds and any related activities.

3. Outside Counsel shall provide all required reports referenced in this Agreement.
4. Outside Counsel shall meet with City Attorney as City Attorney requires.
5. Outside Counsel shall obtain prior approval from City Attorney for travel outside the Counties of: Los Angeles, Orange, Riverside, Imperial, Kern, San Bernardino, Ventura or Santa Barbara. Unapproved travel will not be reimbursed.
6. Outside Counsel shall consult with City Attorney on trial and tactical decisions.
7. Outside Counsel shall maintain all backup documentation to support all entries included in its billings.

IV. CITY'S DUTIES AND RESPONSIBILITIES

A. Key City Personnel

City hereby appoints the City Attorney, or his or her designee, to represent the City on all matters related to this Agreement; however, any written amendment to this Agreement requiring additional funds shall be conditioned upon the approval of the additional appropriation of said funds by the Board of Harbor Commissioners of the City of Los Angeles. The City Attorney's Supervising Attorneys shall be the Harbor Department General Counsel, Janna Sidley, or her designee and the Chief Deputy City Attorney. On all matters relating to invoices the City Attorney's representative shall be the City Attorney's Chief Financial and Administrative Officer.

City Attorney's Supervising Attorneys shall have full authority to act for City on all daily operational matters under this Agreement and shall review and approve Outside Counsel's reports, whether written or verbal, and any change in Outside Counsel's designated Lead Counsel.

V. COMPENSATION

A. Appropriation of Funds.

The compensation amount is an amount not to exceed Sixty Thousand Dollars (\$60,000.00). Outside Counsel's work pursuant to this Agreement shall not exceed that amount without the prior written approval of City Attorney. The City is not obligated to pay Outside Counsel for any work done and/or costs incurred in excess of the appropriated amount unless additional appropriations are made and a written amendment to this Agreement is executed by the parties.

In the event that the Department undertakes a bond issuance (whether new or refunding) or commercial paper issuance, Outside Counsel shall submit to the City Attorney fee and budget proposals for legal services to be rendered in connection with the specific transaction. City Attorney shall select the firm or firms to provide legal services for the proposed transaction. Payments made to Outside Counsel for such transaction-related legal services may be made from the funds of the bond issuance and through the bond trustee or other fiscal agent upon request of the Department after Board approval of the issue and in

accordance with Section VI of this Agreement. Any payments made from the funds of the bond issuance shall not reduce the appropriated amount from Section V (A) above.

B. Outside Counsel's Obligation For Continued Performance.

In the event that Outside Counsel's fees, costs and expenses, in the aggregate, exceed the amount appropriated by City as provided herein, Outside Counsel shall not be obligated to provide services or incur any further costs or expenses on the work required hereunder, and the City shall not be liable for fees or costs in excess of the amount appropriated, unless the appropriated amount is increased as provided herein. Outside Counsel shall be responsible for notifying City Attorney's Supervising Attorneys that the aforesaid appropriated amount will be expended before completion of the work required hereunder and that Outside Counsel will need additional funds if City desires further work. Outside Counsel shall give written notice to City Attorney's Supervising Attorney and to the City Attorney's Chief Financial and Administrative Officer, when Outside Counsel's expenditures under this Agreement are equal to sixty percent (60%) and eighty percent (80%) of the total dollar value appropriated for this Agreement so that City Attorney has sufficient time to consider whether it desires to seek an additional appropriation and written amendment to the Agreement.

C. Fees

The City shall pay Outside Counsel for the services performed by Outside Counsel which are reasonably necessary. The fees for such services shall be based upon the time expended to render the required services, with fractions thereof being stated to the tenth of an hour, and shall be computed at a rate not to exceed the rates specified for each category of staff as listed in **Exhibit B**. Billing rates may be increased with the prior written approval of the Chief Deputy City Attorney only.

D. City's Reservation of Rights to Obtain Reimbursement

City shall pay Outside Counsel based on Outside Counsel's submission of monthly billing statements consistent with the provisions of this Agreement. Even though City makes payment pursuant to billing statements, City shall have the right to demand reimbursement any time City determines that previously paid costs and expenses were not properly billed by Outside Counsel. Outside Counsel shall promptly reimburse City for such costs and expenses previously paid by City.

E. Expenses

Absent the express prior written approval of the appropriate City Attorney's Supervising Attorney, the City will not pay for any extraordinary expenses incurred in any legal matter. The City Attorney's Chief Financial and Administrative Office must approve in writing any item of expense that exceeds \$5,000. The City Attorney's Supervising Attorney must approve in writing any item of expense that exceeds \$1,000. Such expenses include, but are not limited to, expert witnesses, consultant services, investigative services, computer litigation support services, videotaping of depositions, temporary office help, travel expenses, meals as well as other expenses. The City will not pay for business class or first class airfare or luxury hotels. City shall reimburse Outside Counsel for the actual out-of-

pocket expenses, enumerated below, but without any additional costs for having advanced the funds. Outside Counsel shall note that City is exempt from all filing fee charges.

1. Reimbursable ordinary expenses shall include, but are not limited to:

- a) Transcript fees;
- b) Messenger service - where appropriate, documents should be transmitted via email;
- c) Facsimile/Telecopier (FAX) transmission - Outside Counsel shall not bill the City for any expense related to facsimile charges beyond Outside Counsel's actual net costs for long distance telephone charges actually and reasonably incurred by Outside Counsel for the sending of facsimiles. Outside Counsel shall indicate in its billing statements the number of pages transmitted via facsimile together with the related cost of each charge. Outside Counsel shall attach the appropriate receipts, invoices or proof of any expenditure for your charges for facsimiles.
- d) In-house document reproduction. Outside Counsel may charge up to \$0.10 cents per page for photocopies. The billing statement shall contain the total number of copies made.

2. Reimbursable extraordinary expenses shall include charges of which Outside Counsel has obtained City Attorney's prior written approval. Such expenses shall include, but are not limited to:

- a) Consultants;
- b) Expert witnesses;
- c) Investigative services;
- d) Computer Assisted Legal Research ("CALR") - The City of Los Angeles's decision to retain a particular firm is based in part on the firm's expertise and knowledge. The City therefore assumes familiarity with the basic substantive law at issue in the matter for which the firm was retained; any exception to this general expectation should be discussed fully at the time of retention. In conducting legal research the law firm is expected to utilize all appropriate sources reasonably available, including previously prepared briefs and memoranda. Should Outside Counsel determine that it is necessary to incur CALR charges in order to satisfy the terms of this Agreement, Outside Counsel shall obtain City Attorney Supervising Attorney's prior written approval to charge for such expenses. No charges for CALR shall be paid by the City without its prior written approval of such a charge.
- e) Outside Counsel shall describe in detail in its billings any travel expenses incurred by Outside Counsel. City retains the right to audit these expenses. Only coach fare will be reimbursed for travel.

Lodging - If a receipt is submitted, a single occupancy hotel accommodation will be reimbursed up to a maximum of \$165.50 plus taxes. For trial attendance by out-of-town experts or consultants, this rate may be increased,

depending on the availability of lodging and prior City Attorney written approval.

3. Non-reimbursable expenses shall include, but are not limited to:

- a) Staff time or overtime for performing secretarial, clerical, or word processing functions;
- b) Charges for time spent complying with City Attorney audits or billing inquiries;
- c) Charges for work performed which City Attorney had not authorized. Such work shall be a gratuitous effort by Outside Counsel; and
- d) Expenses that are considered to be part of general law firm overhead, including but not limited to, administrative time, secretarial time, calendaring, setting up files, indexing, word processing, air conditioning, equipment rental, office supplies, meals, snacks, beverages, seminars, books or association dues, etc.

F. Most Favored Nations

Outside Counsel represents that, as of the date hereof, the rates set forth in Section V.C., above and the other economic terms and conditions provided in this Agreement, taken individually, are at least as favorable to City as those provided to any other client of Outside Counsel (other than pro bono clients).

If during the term of this Agreement (including any extension or renewal) Outside Counsel has in effect or places into effect with any client (other than a pro bono client) a lower rate or other more favorable economic term or condition than provided under this Agreement (a "More Favorable Provision"), Outside Counsel will promptly offer such More Favorable Provision, unconditionally, to City by providing written notice thereof to City (an "MFN Notice") and, at City's election, this Agreement will be deemed to have been modified to provide City with such More Favorable Provision. Notwithstanding anything herein to the contrary, Outside Counsel's failure to provide City with an MFN Notice will not limit or otherwise impact City's right to enjoy the benefits of the applicable More Favorable Provision(s).

VI. BILLINGS AND PAYMENTS

A. Billings

1. Outside Counsel shall submit its billing statement for bond transaction legal services one week in advance of closing for Financing to the bond Trustee and submit concurrent copies to the City Attorney representative and Harbor Accounts Payable Section identified in Sub-Section six (6) below.

Outside Counsel and City Attorney recognize that legal services performed under this Agreement are being paid for with Harbor Department trust funds and that, therefore, a heightened duty of care exists in both Outside Counsel and City Attorney to ensure that Outside Counsel scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying out the goals of this Agreement. Outside Counsel pledges to

observe a duty of reasonableness and cost effective representation in all aspects of this Agreement. The billing statement shall identify the time period during which services were provided, the attorneys providing services for the Financing, the fixed legal fee for services as established pursuant to this Agreement, and itemized expenses. Each such invoice shall be signed by the Outside Counsel's Supervising Attorney and shall include the following certification:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. _____ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

(Supervising Attorney's Signature)

2. The City will not pay for more than one attorney doing any particular task unless City Attorney has given its prior written approval. The City will not pay for two or more attorneys attending the same deposition or court appearance. The City will pay for the time recorded by more than one attorney for in-office conferences, but only if the conference is an occasional and necessary strategy meeting relating to some significant legal event or proceeding.

The City shall not pay for duplicative time charges by two or more attorneys, e.g., for legal research, reviewing documents, drafting documents, except as approved in writing by City Attorney. The City shall not pay for "training" or "apprenticeship" time. The City shall not pay for the involvement of attorneys who work on the case irregularly or sporadically, unless a particular attorney has a special expertise that substantially advances the prosecution/defense of the case.

3. Use of paralegals is encouraged providing they meet the requirements set forth herein. Assignment of work to paralegals should not result in duplicative activity between attorneys and paralegals, or the reworking or rewriting of paralegals' work product by attorneys. The City will not pay for paralegal time spent performing clerical/secretarial work (e.g., filing, indexing, sorting, organizing, photocopying and bates stamping documents) unless the City has given its prior written approval. City expects paralegals to perform true paralegal work, e.g., research, document productions, preparing discovery or responses, interviewing witnesses, etc.

4. Billings under this Agreement shall not be made in more than one-tenth of an hour (six minute) increments, and shall represent the devotion of a full six minutes before such an increment is billed. Under no circumstances shall Outside Counsel use "block billing" procedures, wherein a list of series of activities is done each day with only an aggregate amount of time specified. Instead, Outside Counsel shall provide a detailed specific entry for each separate task and sub-task reflecting the time for such task or subtask. All tasks set forth in Outside Counsel's billing documentation shall be highly specific and highly detailed. Overly generalized listings of task descriptions such as "review contract" or "prepare for negotiations" will not be acceptable. Outside Counsel shall provide a detailed description of each action as described below.

5. Each billing statement shall be identified by a unique number and itemized to

include:

- a) Financing or Project name;
- b) Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal;
 - 1) Each activity shall be billed in a reporting format acceptable to City Attorney.
 - 2) A detailed description of specific activities for each attorney and/or paralegal shall include, but is not limited to:
 - (a) In-person conferences.
 - (b) Telephone call(s).
 - (c) Correspondence.
 - (d) Research, including computerized legal research.
 - (e) Travel.
- c) Total current monthly fees billed for each staffing level;
- d) Total cumulative fees billed for each staffing level;
- e) Total current monthly expenses billed in the following categories:
 - 1) Consultant and expert witness expenses;
 - 2) Deposition and transcript expenses;
 - 3) Other miscellaneous expenses.
- f) Total cumulative expenses to date billed in (e) above.
- g) Outside Counsel shall submit appropriate supporting documents with each billing statement. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Outside Counsel shall provide, all documents reasonably required to determine whether amounts on the billing statement are allowable expenses under this Agreement.

6. For payment and processing, all original billing statements should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
PO Box 191
San Pedro, CA 90733-0191

A copy of all monthly billing statements should be emailed to: Khee@portla.org and mailed to the address below:

Office of the City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731
Attention: Kimberly Hee

B. Payments

City shall make payment(s) for services rendered under this Agreement based on the monthly, itemized billing statement(s) Outside Counsel submits to City Attorney. City Attorney's legal and accounting staff shall review all billing statements in accordance with City's review procedures. City shall make its best effort to process payments promptly after receiving Outside Counsel's monthly billing statement. City shall not pay interest or finance charges on any outstanding balance(s).

C. Audit

For at least three years after completion of services under this Agreement or termination of this Agreement, Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement, shall maintain backup documentation to support all entries included in the monthly billing statement. Such backup documentation shall be maintained in an auditable format and in accordance with generally accepted accounting principles. City Attorney, at its sole discretion, may, at any time up to three years beyond the completion of services or termination of this Agreement, audit Outside Counsel and any third party retained by Outside Counsel to assist in the performance of this Agreement. Outside Counsel and any such third parties shall promptly and fully cooperate with the audit, including affording City Attorney and/or its auditors access to records and files maintained by Outside Counsel and the third party.

VII. NOTICES

All notices and required reports shall be written and hand-delivered or mailed by first class, postage prepaid, addressed to City Attorney or Outside Counsel at the addresses below, or at any other address City Attorney or Outside Counsel shall provide in writing to each other:

A. If notice or a report to City Attorney:

Office of the City Attorney
Harbor Division
425 South Palos Verdes Street
San Pedro, California 90731
Attention: Janna B. Sidley, General Counsel

If notice concerning conflict of interest to City Attorney:

Anne Haley, Managing Assistant City Attorney
City of Los Angeles Office of the City Attorney

200 North Main Street,
8th Floor, City Hall East
Los Angeles, California 90012-413

B. If notice to Outside Counsel:

Kutak Rock LLP
1801 California Street, Suite 3000
Denver, CO 80202-2626
Attention: Michael Reppe

VIII. ASSIGNMENT

No part of this Agreement or any right or obligation arising from it is assignable without City's prior written consent. Any attempt by Outside Counsel to assign or subcontract services relating to this Agreement without City's prior written consent shall constitute a material breach of this Agreement.

IX. STANDARD TERMS AND CONDITIONS

Standard terms and conditions for City outside legal services contracts are attached as Exhibit "A".

X. MERGER

This Agreement supersedes all prior communications and all previous written and oral agreements, and shall constitute the complete and exclusive statement of understanding between City, City Attorney and Outside Counsel relating to the subject matter of this Agreement.

XI. AFFIRMATIVE ACTION

The Outside Counsel, during the performance of this Agreement, shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit "C."

XII. SMALL BUSINESS DEVELOPMENT PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE) and Minority-Owned, Women-Owned and all Other Business Enterprises (MBE/WBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Outside Counsel shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, MBEs, WBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, MBEs, WBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit "D."

NOTE: Prior to being awarded a contract with the City, Outside Counsel and all subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

XIII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof.

XIV. COMPLIANCE WITH APPLICABLE LAWS

Outside Counsel shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of the Harbor Department's Executive Director.

XV. TRADEMARKS, COPYRIGHTS, AND PATENTS

Outside Counsel agrees to save, keep, hold harmless, protect and indemnify the City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Outside Counsel in the performance of this Agreement.

XVI. PROPRIETARY INFORMATION

A. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Outside Counsel hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Outside Counsel need not obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Outside Counsel or one of its employees, or its subconsultant or the subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Outside Counsel's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature

whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Outside Counsel, its subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

B. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Outside Counsel, its officers, agents, employees, or subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Outside Counsel, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Outside Counsel, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

XVII. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement and any recommendations made by Outside Counsel relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Outside Counsel or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Outside Counsel is required to safeguard such information from access by unauthorized personnel.

XVIII. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Outside Counsel declares that its authorized TIN is 47-0597598. No payments will be made under this Agreement without a valid TIN.

XIV. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Outside Counsel shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

XX. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF

ASSIGNMENTS

The Outside Counsel and/or any subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Outside Counsel and/or subconsultant's employees. The Outside Counsel and/or subconsultant shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Outside Counsel and/or subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Outside Counsel or subconsultant will maintain such compliance throughout the term of this Agreement.

XXI. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Outside Counsel shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Outside Counsel and pursue any and all other legal remedies that may be available. See Exhibit "F."

XXII. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Outside Counsel, subconsultants, and their principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Outside Counsel is required to provide and update certain information to the City as specified by law. Any consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. subconsultant's information must be provided to Outside Counsel within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Outside Counsel, subconsultants, and their principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

XXIII. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Outside Counsel agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXIV. INTEGRATION

This document constitutes the entire Agreement between the parties to this Agreement with respect to the subject matter set forth and supersedes any and all prior Agreements or contracts on this subject matter between the parties, either oral or written. This Agreement may not be amended, waived, or extended, in whole or in part, except in writing signed by both parties.

XXV. SEVERABILITY

Should any part of this Agreement be found to be invalid, the remainder of this Agreement is to continue in full force and effect.

XXVI. ORDER OF PRECEDENCE

The terms and conditions contained in the body of this Agreement shall supersede, control and prevail over any conflicting term or condition contained in any other document, including, but not limited to, Exhibit "A".

. . . .

. . . .

. . . .

. . . .

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date indicated.

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

Date: _____

By _____
EUGENE D. SEROKA
Executive Director

Attest: _____
Board Secretary

THE CITY OF LOS ANGELES,
a municipal corporation

Date: _____

By _____
JAMES P. CLARK
Chief Deputy City Attorney

KUTAK ROCK LLP

Date: 6-6-2019

By Michael Reppe
MICHAEL REPPE
Partner

APPROVED AS TO FORM

Sept 10, 2019
MICHAEL N. FEUER, City Attorney

By _____
JANNA B. SIDLEY, General Counsel

Account#	54410	W.O. #	000
Ctr/Div#	120	Job Fac.#	000
Proj/Prog#	000		
Budget FY:		Amount:	
2019-20		\$20,000	
2020-21		\$20,000	
2021-22		\$20,000	
TOTAL		\$60,000	
For Acct/Budget Div. Use Only			
Verified by:	<u>Felr</u>		
Verified Funds Available:	<u>706</u>		
Date Approved:	<u>6/14/19</u>		

LIST OF EXHIBITS

- Exhibit A: Standard Terms and Conditions
- Exhibit B: Firm Hourly Rates
- Exhibit C: Affirmative Action
- Exhibit D: Small Business Development Program
- Exhibit E: City Business Tax Registration Certificate
- Exhibit F: Equal Benefits Ordinance

EXHIBIT B

KUTAK ROCK LLP

ATTORNEY FEE SCHEDULE

- A. The specific hourly rates for each authorized timekeeper shall not exceed the following:

Authorized Timekeeper	Title	Hourly Rate
Michael Reppe	Partner	\$450
Michael Thomas	Partner	\$450
Ryan Jardine	Associate	\$375
Pardis Farrokhyar	Associate	\$275
Larry Carlile	Senior Tax Attorney	\$475
Matthias Edrich	Senior Tax Attorney	\$450

PARALEGALS \$115-\$135/per hour

- B. The hourly rate for each timekeeper category shall not exceed the following:

Title	Hourly Rate
Partner	\$450
Associate	\$375
Senior Tax Attorney	\$475

EXHIBIT C
AFFIRMATIVE ACTION PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in

whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires.

The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on **the attached Consultant Description Form** is true and correct and include all material information necessary to identify and explain the operations of

Kutak Rock LLP

Name of Firm

as well as the ownership and location thereof. Further, the undersigned agrees to provide complete and accurate information regarding ownership in the named firm, and all of its domestic and foreign affiliates, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents, and the ownership documents of all of its domestic and foreign affiliates, in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

SBE VSBE MBE WBE DVBE OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) Please indicate the **Local Business Enterprise** status of your company. Only one box must be checked:

LBE Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. "Headquartered" shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties.
- A Non-LBE is any business that does not meet the definition of a LBE.

Signature: Michael K. Reppe

Printed Name: Michael K. Reppe

Title: Partner

Date Signed: 3/27/2019



CITY OF LOS ANGELES
Office of Finance - LATAX Report

ACCOUNT NUMBER 0000660383 **LEGAL NAME** KUTAK ROCK LLP **TAX STATUS** CLEAR

LOCATION	DBA NAME	LOCATION ADDRESS	STARTED AT LOCATION	END DATE	IN CITY	COUNCIL	EMP ZONE
0001		777 S FIGUEROA ST STE 4550 LOS ANGELES CA 90017-5800	07/01/1988		Y	Council District 14	None
FCC DESCRIPTION		START OF ACTIVITY					
L049 Professions / Occupations		01/01/2007					

EXHIBIT F

EQUAL BENEFITS ORDINANCE

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's

household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.** Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.