

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, 1801 California Street Suite 3100, Denver, CO 80202 ("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 **June 19, 2013** and shall continue until **June 18, 2016**, 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) The Board of Harbor Commissioners of the City of Los Angeles, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.
- c) 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; and
 - 2) Continue to perform services not terminated or suspended by the notice.
 - 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. In addition to any other remedies provided by this Agreement, law or equity, Outside Counsel shall be liable to City for any excess costs associated with obtaining and utilizing alternative legal services.

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 two days of the termination of services.
- b) 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 provided at the time of termination; and
 - 4) A list and description of schedules for any proposed Financing.
- c) 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 City, Outside Counsel shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees 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, its boards, officers, agents, employees, or subconsultants regardless of whether any act, omission, or negligence of City, its boards, officers, agents, or employees contributed thereto; provided that (1) if the City contributes to a loss, Outside Counsel's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Outside Counsel shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

F. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of City, Outside Counsel shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees 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, its boards, officers,

agents, employees, or subconsultants.

G. Workers' Compensation

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 the Outside Counsel shall comply with such provisions before commencing the performance of the tasks under this Agreement. 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. See Exhibit "C."

H. Professional Liability Insurance

Outside Counsel certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000.00), which covers the 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. Two (2) executed copies of the special endorsement, Exhibit "C," attached hereto and made a part hereof shall be filed with the Harbor Department's Executive Director. Alternatively, two (2) certified copies of the full policy containing a 30-calendar-day cancellation notice by receipted mail may be submitted. Notice of occurrences or claims under the policy shall be made to the Office of the City Attorney Harbor Division with copies to the Harbor Department's Executive Director.

- a) 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.
- b) Notice of Cancellation: Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.
- c) Copies of Policies: Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to the Harbor Department's Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Port.
- d) Modification of Coverage: The Harbor Department's 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.

- e) **Renewal of Policies:** At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall furnish to Harbor Department's Executive Director 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. If Outside Counsel neglects or fails to secure or maintain the insurance required above, the Harbor Department's 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.
- f) **Right to Self-Insure:** Upon written approval by the Harbor Department's 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. Outside Counsel shall comply with the insurance requirements described in the mandatory City Contracting Requirements, attached hereto as Exhibit "A", having the coverage and limits as specified in Exhibit "C", provided, however, that professional liability insurance shall be subject to availability on the open market at reasonable rates. Non-availability must be documented by a letter from Outside Counsel's insurance broker or agent certifying a good faith effort to obtain the required insurance and listing the names of the carriers approached along with the quotations or declarations received.

Such documentation shall be subject to acceptance by City after review by City Attorney and the City's Risk Manager. If Outside Counsel does not obtain professional liability insurance or maintain the insurance throughout the duration of this Agreement, City Attorney may terminate the Agreement.

I. 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.

J. 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.

K. Remedies Reserved to City

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

L. 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.

M. Changes and Written Amendment of Terms

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

N. 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: **660383-94**. 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 K. Reppe, Partner**. 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 if 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

- 1. 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's Senior Assistant City Attorney, or his or her designee and the Chief Deputy City Attorney. On all matters relating to billing statements the City Attorney's representative shall be the City Attorney's Chief Financial and Administrative Officer.

2. 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 Board of Harbor Commissioners of the City of Los Angeles has appropriated Sixty Thousand Dollars (\$ 60,000.00) for this Agreement. 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

1. 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**.

2. 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) Deposition fees- The City expects Outside Counsel to keep the costs of deposition transcripts to a minimum. When depositions are taken and Outside Counsel receives the original, City shall not pay the court reporter's fee for providing Outside Counsel with an extra photocopy of the deposition transcript. City expects Outside Counsel to make a photocopy of the original at Outside Counsel's office. Likewise, when attending depositions of third parties or third-party witnesses, City requests that, if Outside Counsel believes an additional copy of the deposition transcript is necessary, Outside Counsel agree with opposing counsel or co-counsel to share the costs. Prior written approval from City must be obtained before ordering any expedited original or expedited copy of a deposition transcript.

b) Deposition summaries, if necessary, should be brief and should be completed by the deposing attorney. The City shall not pay for a paralegal or other lawyer to summarize the deposition transcript unless trial is imminent. City shall not pay for summaries that are, in effect, a complete regurgitation of the underlying deposition.

c) Transcript fees;

d) Messenger service - where appropriate, documents should be transmitted via email or facsimile/telecopier;

e) 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.

f) Process service;

g) 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. All travel expenses outside the Counties of Los Angeles, San Bernardino, Orange, Riverside, Imperial, Kern, Ventura and Santa Barbara shall be subject to City Attorney's prior written approval.

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 Sections III.C. and 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 to Excluded Clients (as defined in the subsequent sentence). For purposes of this Section V.F., the term "Excluded Clients" means (1) pro bono clients, and (2) the County of Los Angeles which Outside Counsel represents that it has billed in excess of one million dollars (\$1,000,000) during the prior 12

calendar months.

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 an Excluded Client) a lower rate or other more favorable economic term or condition than provided under this Agreement (a "More Favorable Provision"), Outside Counsel shall promptly offer such More Favorable Provision to City, unconditionally by providing written notice thereof to City (an "MFN Notice") and, at City's election, this Agreement shall be deemed to have been modified to provide City with such More Favorable Provision from the date such provision is effective for Outside Counsel's other client. Notwithstanding the foregoing, if Outside Counsel bills City under this Agreement and any other contracts with City (including its agencies, departments or affiliates) an aggregate of one million dollars (\$1,000,000) during any 12 calendar months ("Billing Threshold"), Outside Counsel shall promptly provide written notice thereof to City (a "Billing Threshold Notice"). Such Billing Threshold Notice shall also offer, unconditionally any More Favorable Provision that Outside Counsel then has in effect with the County of Los Angeles and, at City's election, this Agreement shall be deemed to have been modified, from the date Outside Counsel exceeded the Billing Threshold, to provide City with such More Favorable Provision for the remainder of the term of this Agreement (including any extension or renewal). In addition, upon such occurrence, this Agreement shall be deemed to have been modified to eliminate the County of Los Angeles from the definition of Excluded Clients for the remainder of the term of this Agreement (including any extension or renewal).

Outside Counsel's failure to provide City with an MFN Notice or a Billing Threshold Notice shall 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 Section VII 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.

5. 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.

6. 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.
- e) Total cumulative expenses to date billed in (e) above.

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.

Further, where the Outside Counsel employs subconsultants under this Agreement, the Outside Counsel shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit "E") listing SBE/MBE/WBE/OBE amounts. Outside Counsel shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit.

7. 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 mailed to the address below:

Candy Pabalan
Business Office
Office of the City Attorney
200 North Main Street,
8th Floor, City Hall East
Los Angeles, California 90012-4130

B. Payments

1. 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.

2. City Attorney's legal and accounting staff shall review all billing statements in accordance with City's review procedures.

3. 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 90012-4130

B. If notice to Outside Counsel:

Kutak Rock LLP
1801 California Street, Suite 3100
Denver, Colorado 80202
Attention: Michael Reppe, Partner

VIII. ASSIGNMENT

A. No part of this Agreement or any right or obligation arising from it is assignable without City's prior written consent.

B. 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 "F."

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 with the Department's Contracts Management Database, e-DiversityXchange.

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. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XVI. 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.

XVII. PROPRIETARY INFORMATION

The Outside Counsel may not disclose to any party without City's permission any information developed pursuant to this Agreement. The Harbor Department will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the Harbor Department.

XVIII. 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.

XVIV. 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.

XX. 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.

XXI. 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.

XXII. 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 "G."

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.

XXVI. 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.

XI. 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".

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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 _____
Executive Director

Attest: _____
Board Secretary

THE CITY OF LOS ANGELES, a municipal corporation

Date: _____

By _____
WILLIAM W. CARTER
Chief Deputy City Attorney

KUTAK ROCK LLP

Date: 5-30-13

By Michael K. Reppe

Attest: Arthur H. Brennan

APPROVED AS TO FORM
_____, 2013
CARMEN A. TRUTANICH, 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:	
	2013-14		\$16,670
	2014-15		\$16,670
	2015-16		\$26,660
	TOTAL		\$60,000

For Acct/Budget Div. Use Only

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

LIST OF EXHIBITS

- Exhibit A: Standard Terms and Conditions
- Exhibit B: Firm Hourly Rates
- Exhibit C: Insurance Requirements Harbor Risk Management
- Exhibit D: Small Business Development Program
- Exhibit E: Monitoring Form
- Exhibit F: Affirmative Action
- Exhibit G: Equal Benefits Ordinance
- Exhibit H: City Business Tax Registration Certificate

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	\$400.00
Sam Balisy	Partner	\$400.00
Michael Thomas	Partner	\$365.00
Ryan Jardine	Associate	\$225.00
Pardis Farrokhyar	Associate	\$225
Larry Carlile	Sr. Tax Attorney	\$400.00
Darren McHugh	Tax Attorney	\$265.00

PARALEGALS \$ _____ /per hour

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

Title	Hourly Rate
Partners	\$400.00
Sr. Tax Attorney	\$400.00
Tax Attorney	\$265.00
Associates	\$225.00

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 Nixon Peabody, a limited liability partnership, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013 ("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 **June 19, 2013** and shall continue until **June 18, 2016**, 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) The Board of Harbor Commissioners of the City of Los Angeles, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.
- c) 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; and
 - 2) Continue to perform services not terminated or suspended by the notice.
 - 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. In addition to any other remedies provided by this Agreement, law or equity, Outside Counsel shall be liable to City for any excess costs associated with obtaining and utilizing alternative legal services.

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.

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 of the City of Los Angeles 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 two 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 any non-transactional bond services provided at the time of termination; and
 - 4) A list and description of future schedules for any proposed Financing.
- c) Outside Counsel shall give City Attorney all 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 City, Outside Counsel shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees 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, its boards, officers, agents, employees, or subconsultants regardless of whether any act, omission, or negligence of City, its boards, officers, agents, or employees contributed thereto; provided that (1) if the City contributes to a loss, Outside Counsel's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Outside Counsel shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis. The indemnification obligation created hereby shall survive for a period of time that a comparable negligence action in tort would survive under the applicable statute of limitations and no longer.

F. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of City, Outside Counsel shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees 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, its boards, officers, agents, employees, or subconsultants. The indemnification obligation created hereby shall survive for a period of time that a comparable negligence action in tort would survive under the applicable statute of limitations and no longer.

G. Workers' Compensation

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 the Outside Counsel shall comply with such provisions before commencing the performance of the tasks under this Agreement. 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. See Exhibit "C."

H. Professional Liability Insurance

Outside Counsel certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000.00), which covers the 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. Two (2) executed copies of the special endorsement, Exhibit "C," attached hereto and made a part hereof shall be filed with the Harbor Department's Executive Director. Alternatively, two (2) certified copies of the full policy containing a 30-calendar-day cancellation notice by receipted mail may be submitted. Notice of occurrences or claims under the policy shall be made to the Office of the City Attorney Harbor Division with copies to the Harbor Department's Executive Director.

- a) 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.
- b) Notice of Cancellation: Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.
- c) Copies of Policies: Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to the Harbor Department's Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Port.
- d) 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.

- e) **Renewal of Policies:** At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall furnish to the Harbor Department's Executive Director 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. If Outside Counsel neglects or fails to secure or maintain the insurance required above, the Harbor Department's 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.

- f) **Right to Self-Insure:** Upon written approval by the Harbor Department's 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. Outside Counsel shall comply with the insurance requirements described in the mandatory City Contracting Requirements, attached hereto as Exhibit "A", having the coverage and limits as specified in Exhibit "C", provided, however, that professional liability insurance shall be subject to availability on the open market at reasonable rates. Non-availability must be documented by a letter from Outside Counsel's insurance broker or agent certifying a good faith effort to obtain the required insurance and listing the names of the carriers approached along with the quotations or declarations received.

Such documentation shall be subject to acceptance by City after review by City Attorney and the City's Risk Manager. If Outside Counsel does not obtain professional liability insurance or maintain the insurance throughout the duration of this Agreement, City Attorney may terminate the Agreement.

I. 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.

J. 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.

K. Remedies Reserved to City

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

L. 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.

M. Changes and Written Amendment of Terms

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

N. 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: **402335-0002-1**. 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 **Charles C. Wolf**. 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. Partners and associates shall be admitted to practice law before all of the courts of the State of California. 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, "NIXON PEABODY 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, bond 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

- 1. 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's Senior Assistant City Attorney, or his or her designee and the Chief Deputy City Attorney. On all matters relating to billing statements the City Attorney's representative shall be the City Attorney's Chief Financial and Administrative Officer.

2. 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 Board of Harbor Commissioners of the City of Los Angeles has appropriated Sixty Thousand Dollars (\$ 60,000.00) for this Agreement. 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 and 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

1. 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**.

2. 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 invoices, 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) Deposition fees- The City expects Outside Counsel to keep the costs of deposition transcripts to a minimum. When depositions are taken and Outside Counsel receives the original, City shall not pay the court reporter's fee for providing Outside Counsel with an extra photocopy of the deposition transcript. City expects Outside Counsel to make a photocopy of the original at Outside Counsel's office. Likewise, when attending depositions of third parties or third-party witnesses, City requests that, if Outside Counsel believes an additional copy of the deposition transcript is necessary, Outside Counsel agree with opposing counsel or co-counsel to share the costs. Prior written approval from City must be obtained before ordering any expedited original or expedited copy of a deposition transcript.
 - b) Deposition summaries, if necessary, should be brief and should be completed by the deposing attorney. The City shall not pay for a paralegal or other lawyer to summarize the deposition transcript unless trial is imminent. City shall not pay for summaries that are, in effect, a complete regurgitation of the underlying deposition.
 - c) Transcript fees;
 - d) Messenger service - where appropriate, documents should be transmitted via email or facsimile/telecopier;
 - e) 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.
 - f) Process service;
 - g) 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 except 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. All travel expenses outside the Counties of Los Angeles, San Bernardino, Orange, Riverside, Imperial, Kern, Ventura and Santa Barbara shall be subject to City Attorney's prior written approval.

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 Sections III.C. and 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 to Excluded Clients (as defined in the subsequent sentence). For purposes of this Section V.F., the term "Excluded Clients" means (1) pro bono clients, and (2) the County of Los Angeles which Outside Counsel represents that it billed in excess of one million dollars (\$1,000,000) during the 12 calendar months prior to the time such rates were set.

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 an Excluded Client) a lower rate or other more favorable economic term or condition than provided under this Agreement (a "More Favorable Provision"), Outside Counsel shall promptly offer such More Favorable Provision to City, unconditionally by providing written notice thereof to City (an "MFN Notice") and, at City's election, this Agreement shall be deemed to have been modified to provide City with such More Favorable Provision from the date such provision is effective for Outside Counsel's other client. Notwithstanding the foregoing, if Outside Counsel bills City under this Agreement and any other contracts with City (including its agencies, departments or affiliates) an aggregate of one million dollars (\$1,000,000) during any 12 calendar months ("Billing Threshold"), Outside Counsel shall promptly provide written notice thereof to City (a "Billing Threshold Notice"). Such Billing Threshold Notice shall also offer, unconditionally any More Favorable Provision that Outside Counsel then has in effect with the County of Los Angeles and, at City's election, this Agreement shall be deemed to have been modified, from the date Outside Counsel exceeded the Billing Threshold, to provide City with such More Favorable Provision for the remainder of the term of this Agreement (including any extension or renewal). In addition, upon such occurrence, this Agreement shall be deemed to have been modified to eliminate the County of Los Angeles from the definition of Excluded Clients for the remainder of the term of this Agreement (including any extension or renewal).

Outside Counsel's failure to provide City with an MFN Notice or a Billing Threshold Notice shall 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 Section VII below.

2. Outside Counsel and City Attorney recognize that legal services performed under this Agreement are being paid for with Harbor Department trust funds and, 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)

3. 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.

4. 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.

5. 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.

6. 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 databases.
 - (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.

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.

Further, where the Outside Counsel employs subconsultants under this Agreement, the Outside Counsel shall submit to City, with each monthly billing statement, a Monthly Subconsultant Monitoring Report Form (Exhibit "E") listing SBE/MBE/WBE/OBE amounts. Outside Counsel shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit.

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 the monthly billing statement should be mailed to the address below:

Candy Pabalan
Business Office
Office of the City Attorney
200 North Main Street,
8th Floor, City Hall East
Los Angeles, California 90012-4130

B. Payments

1. 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.

2. City Attorney's legal and accounting staff shall review all billing statements in accordance with City's review procedures.

3. 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 90012-4130

- B. If notice to Outside Counsel:

Nixon Peabody LLP
Gas Company Tower
555 West Fifth Street 46th Floor
Los Angeles, CA 90012
Attention: Charles C. Wolf

VIII. ASSIGNMENT

A. No part of this Agreement or any right or obligation arising from it is assignable without City's prior written consent.

B. 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". Notwithstanding anything to the contrary therein, the last sentence of PSC-17 Indemnification is amended to read as follows:

The provisions of this paragraph survive expiration or termination of this Contract for a period of time that a comparable negligence action in tort would survive under the applicable statute of limitations and no longer.

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 "F."

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 with the Department's Contracts Management Database, e-DiversityXchange.

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. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XVI. 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.

XVII. PROPRIETARY INFORMATION

The Outside Counsel may not disclose to any party without City's permission any information developed pursuant to this Agreement. The Harbor Department will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the Harbor Department.

XVIII. 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.

XIV. 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 16-0764720. No payments will be made under this Agreement without a valid TIN.

XX. 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.

XXI. 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.

XXII. 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 "G."

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.

XXVI. 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.

XI. 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".

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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 _____
Executive Director

Attest: _____
Board Secretary

THE CITY OF LOS ANGELES,
a municipal corporation

Date: _____

By _____
WILLIAM W. CARTER
Chief Deputy City Attorney

NIXON PEABODY LLP

Date: May 30, 2013

By Charles C. Wolf

Attest: Stuart Clapp

APPROVED AS TO FORM
_____, 2013
CARMEN A. TRUTANICH, 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:	
	2013-14		\$16,670
	2014-15		\$16,670
	2015-16		\$26,670
	TOTAL		\$60,000

For Acct/Budget Div. Use Only

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

LIST OF EXHIBITS

- Exhibit A: Standard Terms and Conditions
- Exhibit B: Firm Hourly Rates
- Exhibit C: Insurance Requirements Harbor Risk Management
- Exhibit D: Small Business Development Program
- Exhibit E: Monitoring Form
- Exhibit F: Affirmative Action
- Exhibit G: Equal Benefits Ordinance
- Exhibit H: City Business Tax Registration Certificate

EXHIBIT B

NIXON PEABODY, LLP

ATTORNEY FEE SCHEDULE

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

Authorized Timekeeper	Title	Hourly Rate
Charles Wolf	Partner	\$425.00
Daniel Deaton	Partner	\$425.00
Elizabeth Columbo	Partner	\$425.00
Travis Gibbs	Partner	\$425.00
Heather White	Associate	\$325.00
Graham Beck	Associate	\$325.00
Rebecca Husman	Associate	\$325.00
Amy Pham	Associate	\$325.00

PARALEGALS \$125.00/per hour

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

Title	Hourly Rate
Partners	\$425.00
Senior Associate	\$325.00
Associates	\$325.00
Paralegals	\$125.00

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

BETWEEN

THE CITY OF LOS ANGELES

AND

POLSINELLI 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 Polsinelli LLP, a limited liability partnership, 2049 Century Park East Suite 2300, Los Angeles, CA 90067 ("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 **June 19, 2013** and shall continue until **June 18, 2016**, 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) The Board of Harbor Commissioners of the City of Los Angeles, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.
- c) 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; and
 - 2) Continue to perform services not terminated or suspended by the notice.
 - 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. In addition to any other remedies provided by this Agreement, law or equity, Outside Counsel shall be liable to City for any excess costs associated with obtaining and utilizing alternative legal services.

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 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.

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 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 two days of the termination of services.
- b) 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 any non-transactional bond services provided at the time of termination; and
 - 4) A list and description of schedules for any proposed Financing.
- c) 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 City, Outside Counsel shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees 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, its boards, officers, agents, employees, or subconsultants regardless of whether any act, omission, or negligence of City, its boards, officers, agents, or employees contributed thereto; provided that (1) if the City contributes to a loss, Outside Counsel's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Outside Counsel shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

F. Indemnity for Professional Liability

Except for the sole negligence or willful misconduct of City, Outside Counsel shall at all times indemnify, protect, defend, and hold harmless City and any and all of its boards, officers, agents, or employees from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees 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, its boards, officers, agents, employees, or subconsultants.

G. Workers' Compensation

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 the Outside Counsel shall comply with such provisions before commencing the performance of the tasks under this Agreement. 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. See **Exhibit "C."**

H. Professional Liability Insurance

Outside Counsel certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000.00), which covers the 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. Two (2) executed copies of the special endorsement, **Exhibit "C,"** attached hereto and made a part hereof shall be filed with the Harbor Department's Executive Director. Alternatively, two (2) certified copies of the full policy containing a 30-calendar-day cancellation notice by receipted mail may be submitted. Notice of occurrences or claims under the policy shall be made to the Office of the City Attorney Harbor Division with copies to Harbor Department's Executive Director.

- a) **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.
- b) **Notice of Cancellation:** Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.
- c) **Copies of Policies:** Two certified copies of each policy containing the additional insured and 30-day cancellation notice language shall be furnished to Executive Director. Alternatively, two duplicate original additional insured endorsements on forms provided by the Department, as indicated above, may be submitted. The form of such policy or endorsement shall be subject to the approval of the Risk Manager of the Port.
- d) **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.

- e) **Renewal of Policies:** At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall furnish to Executive Director 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. 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.
- f) **Right to Self-Insure:** Upon written approval by the Harbor Department's 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. Outside Counsel shall comply with the insurance requirements described in the mandatory City Contracting Requirements, attached hereto as **Exhibit "A"**, having the coverage and limits as specified in **Exhibit "C"**, provided, however, that professional liability insurance shall be subject to availability on the open market at reasonable rates. Non-availability must be documented by a letter from Outside Counsel's insurance broker or agent certifying a good faith effort to obtain the required insurance and listing the names of the carriers approached along with the quotations or declarations received. Such documentation shall be subject to acceptance by City after review by City Attorney and the City's Risk Manager. If Outside Counsel does not obtain professional liability insurance or maintain the insurance throughout

the duration of this Agreement, City Attorney may terminate the Agreement.

I. 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.

J. 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.

K. Remedies Reserved to City

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

L. 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.

M. Changes and Written Amendment of Terms

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

N. 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: 0002566838-0001-0. 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 **Lisa Quateman, Managing Partner, Los Angeles**. 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 Attorneys 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. Partners and associates shall be admitted to practice law before all of the courts of the State of California. 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, "POL SINELLI 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 and/or disclosure counsel may include, but not be limited to, the following services, as shall be directed by the City Attorney's Supervising Attorney on each project or Financing:

- 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 if 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.

IV. CITY'S DUTIES AND RESPONSIBILITIES

A. Key City Personnel

1. 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 Division's Senior Assistant City Attorney, or his or her designee and the Chief Deputy City Attorney. On all matters relating to billing statements the City Attorney's representative shall be the City Attorney's Chief Financial and Administrative Officer.

2. 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 Board of Harbor Commissioners of the City of Los Angeles has appropriated Sixty Thousand Dollars (\$ 60,000.00) for this Agreement. 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 and 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

1. 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**.

2. 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 invoices consistent with the provisions of this Agreement. Even though City makes payment pursuant to invoices, 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) Deposition fees- The City expects Outside Counsel to keep the costs of deposition transcripts to a minimum. When depositions are taken and Outside Counsel receives the original, City shall not pay the court reporter's fee for providing Outside Counsel with an extra photocopy of the deposition transcript. City expects Outside Counsel to make a photocopy of the original at Outside Counsel's office. Likewise, when attending depositions of third parties or third-party witnesses, City requests that, if Outside Counsel believes an additional copy of the deposition transcript is necessary, Outside Counsel agree with opposing counsel or co-counsel to share the costs. Prior written approval from City must be obtained before ordering any expedited original or expedited copy of a deposition transcript.

b) Deposition summaries, if necessary, should be brief and should be completed by the deposing attorney. The City shall not pay for a paralegal or other lawyer to summarize the deposition transcript unless trial is imminent. City shall not pay for summaries that are, in effect, a complete regurgitation of the underlying deposition.

c) Transcript fees;

d) Messenger service - where appropriate, documents should be transmitted via email or facsimile/telecopier;

e) 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.

f) Process service;

g) 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. All travel expenses outside the Counties of Los Angeles, San Bernardino, Orange, Riverside, Imperial, Kern, Ventura and Santa Barbara shall be subject to City Attorney's prior written approval.

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 **Exhibit B** 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 to Excluded Clients (as defined in the subsequent sentence). For purposes of this Section V.F., the term "Excluded Clients" means (1) pro bono clients and (2) clients of Outside Counsel for which Outside counsel provides services different from those described herein, and clients outside California.

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 an Excluded Client) a lower rate or other more favorable economic term or condition than provided under this Agreement (a "More Favorable Provision"), Outside Counsel shall use reasonable efforts to promptly offer such More Favorable Provision to City, unconditionally by providing written notice thereof to City (an "MFN Notice") and, at City's election, this Agreement shall be deemed to have been modified to provide City with such More Favorable Provision from the date such provision is effective for Outside Counsel's other client. Notwithstanding the foregoing, if Outside Counsel bills City under this Agreement and any other contracts with City (including its agencies, departments or affiliates) an aggregate of one million dollars (\$1,000,000) during any 12 calendar months ("Billing Threshold"), Outside Counsel shall promptly provide written notice thereof to City (a "Billing Threshold Notice"). Such Billing Threshold Notice shall also offer, unconditionally any More Favorable Provision that Outside Counsel then has in effect with the County of Los Angeles and, at City's election, this Agreement shall be deemed to have been modified, from the date Outside Counsel exceeded the Billing Threshold, to provide City with such More Favorable Provision for the remainder of the term of this Agreement (including any extension or renewal). In addition, upon such occurrence, this Agreement shall be deemed to have been modified to eliminate the County of Los Angeles from the definition of Excluded Clients for the remainder of the term of this Agreement (including any extension or renewal).

Outside Counsel's failure to provide City with an MFN Notice or a Billing Threshold Notice shall 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 Section VII below.

2. Outside Counsel and City Attorney recognize that legal services performed under this Agreement are being paid for with Harbor Department trust funds and 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)

3. 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.

4. 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.

5. 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.

6. 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) Depositions.
 - (e) Case reports.
 - (f) Pleading, brief or opinion drafting.
 - (g) Hearings.
 - (h) Research, including computerized legal research databases.

- (i) 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.

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.

Further, where the Outside Counsel employs subconsultants under this Agreement, the Outside Counsel shall submit to City, with each monthly billing, a Monthly Subconsultant Monitoring Report Form (Exhibit "E") listing SBE/MBE/WBE/OBE amounts. Outside Counsel shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved subconsultant utilization. Billing Statements will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All billing statements are subject to audit.

7. 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 the monthly billing statements should be mailed to the address below:

Candy Pabalan
Business Office
Office of the City Attorney
200 North Main Street,
8th Floor, City Hall East
Los Angeles, California 90012-4130

B. Payments

1. 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.

2. City Attorney's legal and accounting staff shall review all billing statements in accordance with City's review procedures.

3. 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 90012-4130

- B. If notice to Outside Counsel:
Polsinelli LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Attention: Lisa Quateman, Managing Partner

VIII. ASSIGNMENT

A. No part of this Agreement or any right or obligation arising from it is assignable without City's prior written consent.

B. 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 "F."

XII. SMALL BUSINESS DEVELOPMENT PROGRAM

It is the policy of the Harbor 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 with the Department's Contracts Management Database, e-DiversityXchange.

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. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

XVI. 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.

XVII. PROPRIETARY INFORMATION

The Outside Counsel may not disclose to any party without City's permission any information developed pursuant to this Agreement. The Harbor Department will, however, have the right to disclose the information as it determines appropriate considering the nature of the information, its use and the laws applicable to the Harbor Department.

XVIII. 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.

XIV. 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 431064260. No payments will be made under this Agreement without a valid TIN.

XX. 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.

XXI. 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.

XXII. 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 "G."**

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.

XXVI. 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.

XI. 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 _____
Executive Director

Attest: _____
Board Secretary

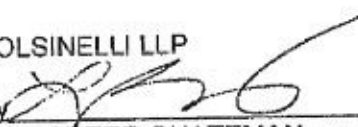
THE CITY OF LOS ANGELES, a municipal corporation

Date: _____

By _____
WILLIAM W. CARTER
Chief Deputy City Attorney

Date: 5/30/13

POLSINELLI LLP

By 
LISA GREER QUATEMAN
Managing Partner, Los Angeles

APPROVED AS TO FORM
_____, 2013
CARMEN A. TRUTANICH, City Attorney

By _____

Account#	54410	W.O. #	000
Ctr/Div#	120	Job Fac.#	000
Proj/Prog#	000		
Budget FY:		Amount:	
	2013-14		\$16,670
	2014-15		\$16,670
	2015-16		\$26,670
	TOTAL		\$60,000

For Acct/Budget Div. Use Only

Verified by: _____

Verified Funds Available: _____

Date Approved: _____

LIST OF EXHIBITS

- Exhibit A: Standard Terms and Conditions
- Exhibit B: Firm Hourly Rates
- Exhibit C: Insurance Requirements Harbor Risk Management
- Exhibit D: Small Business Development Program
- Exhibit E: Monitoring Form
- Exhibit F: Affirmative Action
- Exhibit G: Equal Benefits Ordinance

EXHIBIT B

POLSINELLI, LLP

ATTORNEY FEE SCHEDULE

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

Authorized Timekeeper	Title	Hourly Rate
Lisa Quateman	Managing Partner	\$425.00
Timothy Reimers	Principal	\$395.00
Lauren Mack	Shareholder	\$400.00
Michael Connell	Of Counsel	\$400.00
Jeffrey Fine	Shareholder	\$425.00
Tracey Ginn	Principal	\$375.00
Jessica Zaiger	Associate	\$260.00
Sam Norber	Special Tax Counsel	\$425.00
Robert Droney	Counsel	\$260.00
Kristen Croce	Associate	\$235.00
Jon Otto	Associate	\$235.00

PARALEGALS \$180.00/per hour

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

Title	Hourly Rate
Managing Partner	\$425.00
Shareholder	\$425.00
Principal	\$395.00
Of Counsel	\$400.00
Counsel	\$260.00
Special Tax Counsel	\$425.00
Associate	\$260.00

