

AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

BETWEEN

THE CITY OF LOS ANGELES

AND

BROWN & WINTERS

HARBOR DEPARTMENT

AGREEMENT NO. _____

DATED _____

THIS AGREEMENT FOR PROFESSIONAL LEGAL SERVICES ("Agreement"), is made and entered into by and between the City of Los Angeles, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and the Office of the City Attorney ("City Attorney"), and BROWN & WINTERS, a partnership, 120 Birmingham Drive, Suite 110, Cardiff by the Sea, CA 92007 ("Outside Counsel") with reference to the following:

RECITALS

WHEREAS, the City Attorney and the Board require the use of Outside Counsel to assist the City Attorney with professional legal services related to the preparation, filing, negotiation, and litigation of insurance claims for the cost of investigating, monitoring, mitigating and remediating contaminated properties; 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:

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I. SCOPE OF REPRESENTATION AND CITY ATTORNEY CONTROL OF LITIGATION

A. SERVICES PROVIDED

Outside Counsel is retained to assist the City Attorney by providing professional legal services for the City concerning insurance claims for the costs of investigating, monitoring, mitigating and/or remediating contaminated properties. Outside Counsel shall at all times work under the direction of the City Attorney.

1. Outside Counsel agrees to perform the following legal services:
 - a. Investigate research and discover the existence and terms of historic insurance policies that may cover environmental liabilities of the City's Harbor Department.
 - b. Work with Harbor Department staff and the City Attorney to identify potential insurance claims for environmental liabilities.
 - c. Work with Department staff to identify and summarize costs and expenses incurred, and prepare and tender claims for environmental liabilities.
 - d. Negotiate and attempt to settle tendered claims.
 - e. Prosecute claims through litigation or arbitration as needed until settlement, award or judgment is obtained.
 - f. Oppose any motions for new trial in cases where a judgment was rendered in favor of the City.
 - g. Pursue collection/enforcement of any arbitration awards or judgments favorable to the City.
2. This agreement does not cover, and Outside Counsel is not required to perform:
 - a. The appeal of any favorable awards or judgments that the City determines are unsatisfactory.
 - b. The defense of any appeal of favorable awards or judgments.
3. Outside Counsel shall meet with City Attorney as City requires.
4. Outside Counsel shall provide reports on the status of pending claims and litigation as requested by the City Attorney.
5. Outside Counsel shall obtain written approval from City Attorney before retaining any consultant or expert.
6. Outside Counsel shall maintain all backup documentation to support all entries included in its billings.

B. CITY ATTORNEY CONTROL

Outside Counsel shall at all times work under the direction of the City Attorney. Pursuant to *County of Santa Clara v. Superior Court (Atlantic Richfield)*, 50 Cal.4th 35 (2010), the City of Attorney shall retain and exercise absolute and total control over both the conduct of Outside Counsel and the overall prosecution of any claims and/or litigation. The City Attorney has the requisite supervisory authority and will be personally involved in oversight of all claims. The City Attorney will have the final say as to decisions relating to the ultimate disposition of any claims/cases and any potential settlements. Opposing counsel may contact the City Attorney directly with having to confer with Outside Counsel.

The City Attorney shall be associated as counsel in any litigation initiated by Outside Counsel.

Outside Counsel shall not associate or employ other counsel to assist in performing the services required by this Agreement or to appear on City's behalf in any proceeding or lawsuit concerning claims covered by this Agreement without City Attorney's prior written approval.

C. NON-EXCLUSIVE AGREEMENT

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.

D. 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.

II. COMPENSATION

A. CONTINGENT FEE

Outside Counsel shall be compensated for legal services ONLY if a cost recovery is obtained for City by Outside Counsel on City's behalf. Outside Counsel's compensation shall be thirty-three percent (33%) of the funds recovered on behalf of the City.

Reimbursable Costs and Expenses, as set forth below, shall be reimbursed after the contingency fee is computed. (For example, if a claim is settled for \$1,000 and \$100 in reimbursable costs and expenses were incurred, the contingency fee shall be based on \$1,000.)

If the recovery consists of payments to be made over a period time or other property not entirely cash or cash-equivalents, the contingency fee shall be based on the present cash value of the recovery as determined by generally accepted accounting and appraisal standards. The contingency fee shall be paid out of the first funds or property recovered.

Monetary sanctions awarded to Outside Counsel during the course of any litigation shall not be considered part of City's recovery. Such sanctions shall be deemed compensation to Outside Counsel for extraordinary time and effort expended as a result of an opposing party's bad faith conduct or failure to comply with discovery demands, court orders or similar obligations. Where a sanction award includes a cost item (such as a filing fee), the amount thereof shall be credited to the City's account.

B. REIMBURSABLE COSTS AND EXPENSES

City shall reimburse costs and expenses incurred by Outside Counsel in connection with the provision of legal services. Ordinary costs and expenses do not require pre-approval of the City Attorney.

Extraordinary costs and expenses shall not be incurred without prior written approval. 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 of the City Attorney.

Ordinary reimbursable costs and expenses include:

1. Transcript fees;
2. Messenger service - where appropriate, documents should be transmitted via email or facsimile/telecopier;
3. 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.

4. 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.

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:

- ii. Consultants;
- iii. Expert witnesses;
- iv. Investigative services.

5. 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.
6. 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.
7. 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.

C. NON-REIMBURSABLE COSTS AND EXPENSES

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

1. Travel to/from offices of the City and Outside Counsel's office.
2. Staff time or overtime for performing secretarial, clerical, or word procession functions.
3. Charges for time spent complying with City Attorney audits or billing inquires.
4. 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.

D. APPROPRIATION OF FUNDS FOR COSTS AND EXPENSES

The Board has appropriated Thirty-five Thousand Dollars (\$35,000) for this Agreement to cover Reimbursable Costs and Expenses.

Reimbursable Costs and Expenses may be billed separately by Outside Counsel or may be deducted from City's share of any recoveries maintained in Outside Counsel's client trust account. Outside counsel shall obtain prior written approval from the City Attorney before transferring funds from its client trust account to cover current or past due reimbursable costs and expenses.

E. OUTSIDE COUNSEL'S OBLIGATION FOR CONTINUED PERFORMANCE

In the event that Outside Counsel's 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 costs in excess of the amount appropriated, unless the appropriated amount is increased. 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 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.

III. BILLINGS AND PAYMENTS

A. BILLINGS

1. Outside Counsel may submit its billing statement monthly in arrears following the month service was rendered.
2. Each billing statement shall be identified by a unique number and itemized to include:
 - a) Claim name;
 - b) Total reimbursable costs and expenses in the following categories:
 - i) Consultant and expert witness expenses;
 - ii) Deposition and transcript expenses;
 - iii) Other miscellaneous expenses.
 - c) Total contingency fees owed for the billing period.
 - d) Total cumulative fees and expenses to date.

B. PAYMENTS

1. City Attorney's legal and accounting staff shall review all billing statements in accordance with City's procedures.
2. City shall either make payment(s) for reimbursable costs and expenses incurred under this Agreement based on the itemized billing statement(s) submitted by Outside Counsel or provide written authorization for the transfer of funds from Outside Counsel's client trust account to cover reimbursable costs and fees.
3. City shall provide written authorization for the transfer of contingent fees owed to Outside Counsel from Outside Counsel's client-trust account. Upon receipt of such written authorization Outside Counsel shall withdraw funds to cover contingency fees from its client trust account and, after the payment of reimbursable costs and expenses, remit the balance to the City.
4. 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.

IV. TERM AND TERMINATION

A. PERIOD OF PERFORMANCE

This Agreement shall begin on _____ 2013 and shall continue until February 28, 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 for any or no reason. City Attorney shall terminate or suspend services by delivering to Outside Counsel a written notice specifying the extent to which services are terminated or suspended and the effective date of such termination or suspension.

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

i) Stop services on the date and to the extent specified in the notice; and

ii) Continue to perform services not terminated or suspended by the notice.

c) After receiving a notice of termination, Outside Counsel shall:

i) 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

ii) 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 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, 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 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.

3. Closing Report Upon Termination

a) If requested by City Attorney, Outside Counsel shall deliver a Closing Report on pending litigation (if any) within two days of the termination of services.

b) The Closing Report shall include, but is not limited to:

- i) A brief description of the facts of the case or matter;
- ii) A discussion of applicable law;
- iii) A description of the status of the case or matter; and
- iv) A list and description of future scheduled court appearances.

c) Outside Counsel shall deliver to City Attorney all files and attorney work product. This includes any computerized indices, programs and document retrieval systems created or used.

V. GENERAL CONDITIONS

A. 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 City. Outside Counsel shall bear the sole responsibility and liability for any taxes or fees which may be assessed against it or its employees and for furnishing workers' compensation benefits to any Outside Counsel personnel for injuries arising from services performed under this Agreement.

B. 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.

C. INDEMNITY FOR GENERAL LIABILITY

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and

consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Outside Counsel's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Outside Counsel or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

D. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

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

E. INDEMNITY FOR PROFESSIONAL LIABILITY

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Outside Counsel undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all claims, charges, demands, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses, of any nature whatsoever, which may be sustained or suffered by or secured against the City, its Boards, Officers, Agents, Employees, Assigns and Successors in Interest by reason of any professional malpractice by Outside Counsel or its officers, agents, employees or subconsultants in the performance of this Agreement.

F. PROFESSIONAL LIABILITY INSURANCE

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

Outside Counsel certifies that it now has professional liability insurance in the amount of One Million Dollars (\$1,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following acceptance of the completed project by Board.

Each policy shall include a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

Notice of occurrences of claims under the policy shall be made to the City Attorney's office with copies to Risk Management.

1. 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.

2. 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.

3. 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.

4. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Outside Counsel shall direct their insurance broker or agent to submit to the City's online insurance

compliance system **Track4LA™** at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. 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.

5. Right to Self-Insure

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

- i. 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.
- ii. 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.
- iii. 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.
- iv. Outside Counsel agrees that any insurance carried by Department is excess of Outside Counsel's self-insurance and will not contribute to it.
- v. Outside Counsel provides the name and address of its claims administrator.
- vi. 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.
- vii. 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.
- viii. Outside Counsel has complied with all laws pertaining to self-insurance.

G. GOVERNING LAW

The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of California and any action brought by

either party on this Agreement shall be brought in the Los Angeles County Central District Superior Courts.

H. 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.

I. 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.

J. REMEDIES RESERVED TO CITY

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

K. 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.

L. CHANGES AND WRITTEN AMENDMENT OF TERMS

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

M. NOTICES

All invoices, 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:

1. If invoice to City Attorney:

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

2. If notice or a report to City Attorney:

City Los Angeles, Harbor Department
Office of the City Attorney
425 S. Palos Verdes Street
San Pedro, California 90731
Attention: Joy M. Crose, Assistant General Counsel

3. If notice concerning conflict of interest to City Attorney:

Anne Haley, 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

4. If notice to Outside Counsel:

N. ASSIGNMENT

1. No part of this Agreement or any right or obligation arising from it is assignable without City's prior written consent.
2. 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.

O. 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.

P. 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 a copy of which is attached as

Exhibit A, of the Los Angeles Administrative Code shall be incorporated and made a part of this Agreement.

Q. SMALL/VERY SMALL BUSINESS DEVELOPMENT PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/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, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement. See Exhibit B.

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

R. 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 the 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.

S. 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 Executive Director.

T. 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.

U. PROPRIETARY INFORMATION

1. Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Outside Counsel hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Outside Counsel need not obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Outside Counsel or one of its employees, or its subconsultant or the subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Outside Counsel's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Outside Counsel, its subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.
2. If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Outside Counsel, its officers, agents, employees, or subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Outside Counsel, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Outside Counsel, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license

specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

V. 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.

W. 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 Code 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 and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for the Department. See Exhibit C.

X. 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 **26-1192281**. No payments will be made under this Agreement without a valid TIN.

Y. 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.

Z. 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.

AA. 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 D.

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

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

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and

fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. subconsultant's information must be provided to Outside Counsel within 5 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

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

CC. 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.

DD. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

EE. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of

being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

FF. 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.

LIST OF EXHIBITS

- A – AFFIRMATIVE ACTION
- B – SMALL/VERY SMALL BUSINESS DEVELOPMENT PROGRAM
- C – BUSINESS TAX REGISTRATION CERTIFICATE
- D– EQUAL BENEFITS POLICY

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective, duly authorized representatives.

THE CITY OF LOS ANGELES,
a municipal corporation, acting by and through
its Board of Harbor Commissioners

By _____
Geraldine Knatz, Executive Director

Date _____

Attest _____
Board Secretary

THE CITY OF LOS ANGELES,
a municipal corporation

By _____
WILLIAM W. CARTER,
Chief Deputy City Attorney

Date _____

BROWN & WINTERS

By Wendy Both

Date 2/11/13

APPROVED AS TO FORM AND LEGALITY
CARMEN A. TRUTANICH, City Attorney

By [Signature]
KENNETH F. MATTFELD, Deputy City Attorney

Date FEB 13, 2013

Account #	54410	W.O. #	000
Ctr/Div #	0120	Job Fac. #	000
Proj/Prog #	000		
Budget FY: Amount:			
	2012-13		5,000
	2013-14		35,000
	2014-15		35,000
	2015-16		30,000
	TOTAL		105,000
For Acct/Budget Div. Use Only			
Verified by:	<i>[Signature]</i>		
Verified Funds Available:	<i>[Signature]</i>		
Date Approved:	<i>2/1/13</i>		

Business Tax Registration Number: **0002635443-0001-7**
Internal Revenue Service Taxpayer Identification Number: **26-1192281**
Contract Number: _____

EXHIBIT A
AFFIRMATIVE ACTION PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

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

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

Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.

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

EXHIBIT B
SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBES, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner.

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to www.sba.gov for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be 0%, including 0% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is _____. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$_ million.

Outside Counsel shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Outside Counsel shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Outside Counsel shall endeavor to make an in-kind substitution for the substituted SBE.

In the event of Outside Counsel's noncompliance during the performance of the Agreement, Outside Counsel shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Outside Counsel until noncompliance is corrected, and assess the costs of City's audit of books and records of Outside Counsel and its subconsultants. In the event the Outside Counsel falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Outside Counsel from participation in City contracts for a period of up to five (5) years.

Outside Counsel shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Outside Counsel's intent to comply with the SBE requirement. Prior to

contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on the City's Contracts Management and Opportunities Database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

AFFIDAVIT OF COMPANY STATUS

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

BROWN & WINTERS

Name of Firm

as well as the ownership thereof. Further, the undersigned agrees to provide either through the prime consultant or, directly to the Harbor Department, complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

Please indicate the ownership of your company: SBE VSBE MBE WBE DVBE OBE

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

Signature William D. Brown
Printed Name William D. Brown

Title General Partner
Date Signed September 7, 2012

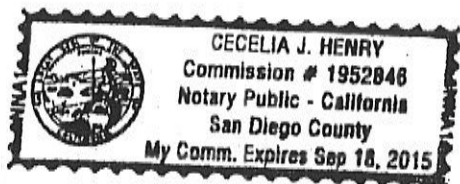
NOTARY

On this 7TH day of SEPTEMBER, 2012, before me appeared WILLIAM D. BROWN to me personally known, who being duly sworn, did execute the

foregoing affidavit, and did state that he/she was properly authorized by BROWN & WINTERS Name of Firm

to execute the affidavit and did so as his or her free act and deed.

SEAL



Notary Public Cecelia J. Henry
Commission Expires SEPTEMBER 18, 2015

Contractor Description Form

PRIME CONTRACTOR

Contract #: _____ Award Date: _____ Contract Term: _____
Contract Title: Legal Services to Pursue Historic Insurance for Reimbursement of
Cost of Investigating, Monitoring & Remediating Contaminated Harbor Dept.
Business Name: Brown & Winters Award Total: \$ _____ Properties
Owner's Ethnicity: _____ Gender Male Group: SBE VSBE MBE WBE DVBE OBE (Check all
that apply) Caucasian
Primary NAICS Code: 541110 Average Three Year Gross Revenue: \$ 2,587,253.88
Address: 120 Birmingham Drive, Suite 110
City/State/Zip: Cardiff by the Sea, CA 92007-1737
Telephone: (760) 633-4485 FAX: (760) 633-4427
Contact Person/Title: Wentzelee Botha, Managing Partner
Email Address: wbotha@brownandwinters.com

SUBCONTRACTOR

Business Name: We do not usually utilize _____ Award Total: \$ _____
Subcontractors.
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

Contractor Description Form

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email Address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

SUBCONTRACTOR

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE
(Check all that apply)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

EXHIBIT C

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

I. MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(213) 473-5901

EXHIBIT D

EQUAL BENEFITS ORDINANCE

Sec. 10.8.2.1. Equal Benefits Ordinance.

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

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

(c) Equal Benefits Requirements.

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

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

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

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

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

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

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

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

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

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

(e) Applicability.

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

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

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

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

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

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

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

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

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

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

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

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