

1 AGREEMENT

2 **30283**

3 THIS AGREEMENT is made and entered, in duplicate, as of May 1, 2005
4 for reference purposes only, pursuant to a minute order adopted by the City Council of
5 the City of Long Beach at its meeting on August 21, 2007, by and between GROBSTEIN,
6 HORWATH & CO., LLP, with its principal office at 15233 Ventura Blvd., 9th Floor,
7 Sherman Oaks, California 91403 ("Contractor"), and the CITY OF LONG BEACH, a
8 municipal corporation, located at 333 West Ocean Boulevard, Long Beach, California
9 90802 ("City");

10 WHEREAS, City required the professional consultant services to assist the
11 City Attorney of the City of Long Beach in connection with Queen's Seaport
12 Development, Inc. (QSDI), Chapter 11 Bankruptcy; and

13 WHEREAS, because the estimated expenditures for these services was
14 expected to be less than \$100,000 Purchase Order BPLW05-18 ("Purchase Order") was
15 issued by the City; and

16 WHEREAS, the expenditures by the City will exceed \$100,000 so that a
17 contract is now required;

18 NOW, THEREFORE, in consideration of the mutual covenants herein
19 contained, it is agreed as follows:

20 1. Contractor shall continue to furnish to the City professional
21 consultant services as further described in the Purchase Order, attached to this
22 Agreement as Exhibit "A" and incorporated by this reference. City shall pay to Contractor
23 an amount not to exceed \$350,000. The total contract amount (not to exceed \$350,000)
24 shall be reduced by actual accumulated payments made under the Purchase Order.

25 2. The term of this Agreement shall commence on May 1, 2005 (which
26 is the commencement date of the Purchase Order) and shall end on June 30, 2008
27 provided, however, that City shall have the right to terminate this Agreement without
28 penalty and without cause by giving five (5) days prior notice to Contractor.

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ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 3. Any notice which, under the terms of the Agreement, must be given
2 or made by either party, shall be in writing and personally delivered or deposited in the
3 U.S. Postal Service, certified or registered mail, return receipt, addressed to the
4 respective parties as follows:

5 If to Contractor:

6 Grobstein, Horwath & Co., LLP
7 9th Floor
8 15233 Ventura Blvd.
9 Sherman Oaks, CA 91403

10 If to City:

11 City Manager
12 City of Long Beach
13 333 W. Ocean Boulevard
14 Long Beach, CA 90802

15 Notice or other communication shall be deemed to have been given or
16 made on the date personal delivery is made or the date shown on the return receipt.
17 Addresses for notice may be changed at any time by giving thirty (30) days prior notice.

18 4. This Agreement may be changed only by a written amendment
19 executed by the authorized representative of the parties. No amendment or modification
20 shall be made by course of performance, course of dealing or usage of trade. This
21 Agreement shall be governed by the laws of the State of California, excluding those laws
22 relating to conflict of laws.

23 5. Contractor shall not assign or transfer this Agreement without the
24 prior written consent of City. Any transfer or assignment without City's prior written
25 consent shall constitute a material default of this Agreement and shall be void ab initio.

26 6. If one or more of the provisions contained in this Agreement are, for
27 any reason, held to be unenforceable under the laws of California, such unenforceability
28 shall not effect any other provision of this Agreement.

 7. In the performance of this Agreement, Contractor shall not
discriminate against any employee or applicant for employment because of race,

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1 religious creed, color, national origin, ancestry, physical handicap, medical condition,
2 AIDS, HIV status, marital status, sexual preference, sex, or age.

3 8. The acceptance of services or the payment of money by City shall
4 not operate as a waiver of any provision of this Agreement, or of any right to damages.
5 The waiver of a breach shall not constitute a waiver of any other or subsequent breach.

6 9. If there is any legal proceeding between the parties to enforce or
7 interpret this Agreement or to protect or establish any rights or remedies under this
8 Agreement, then the prevailing party shall be entitled to its reasonable attorney's fees
9 and court costs.

10 10. If there is any conflict between the Purchase Order and this
11 Agreement, then this Agreement shall govern.

12 IN WITNESS WHEREOF, the parties have caused this Agreement to be
13 duly executed with all formalities required by law as of the date first stated above.

14 GROBSTEIN, HORWATH & CO., LLP

15
16 September 19, 2007

17 By David W Roberts

18 "Contractor"

19 CITY OF LONG BEACH, a municipal corporation

20
21 9/20, 2007

22 By AW Balto

23 "City"

24 This Agreement is approved as to form on 9-20, 2007.

25 ROBERT E. SHANNON, City Attorney

26
27 By Charles Parker

28 Principal Deputy

ATTACHMENT TO PURCHASE ORDER NO. BPLW05-18

FOR PROFESSIONAL SERVICES EQUAL TO OR UNDER \$100,000 (CITY)

ADDITIONAL TERMS AND CONDITIONS

1. All references in the General Conditions of the Purchase Order to "Supplier" shall mean and include Consultant.

2. Consultant shall furnish specialized services in accordance with the standards of the profession and as set forth on the Purchase Order and any attachments thereto or hereto, not to exceed \$50,000. Consultant may select the time and place of performance hereunder provided, however, that access to documents, records, and the like, of the City, if needed by Consultant, shall be available only during City's normal business hours. City shall pay Consultant in due course of payments following receipt from Consultant and approval by City of an itemized statement showing the services performed, the time expended (if billing is hourly), and the name of the project. Consultant shall certify on the statement that Consultant has performed the services in full conformance with the Purchase Order and is entitled to receive payment.

3. As an independent contractor and not an employee, representative, or agent of City, Consultant shall have control of Consultant's work and the manner in which it is performed. Consultant shall be free to contract for similar services to be performed for others during the term of the Purchase Order. Consultant acknowledges and agrees that a) City will not withhold taxes of any kind from Consultant's compensation, b) City will not secure workers' compensation or pay unemployment insurance to, for or on Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Consultant expressly warrants that neither Consultant nor any of its/his/her employees or agents shall represent themselves to be employees or agents of City.

4. Notwithstanding anything to the contrary in the Purchase Order, and as a condition precedent to the effectiveness of the Purchase Order, Consultant shall procure and maintain at Consultant's expense for the duration of the Purchase Order from insurance companies that are admitted to write insurance in California or from authorized non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M. Best Company:

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Such coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. The City, its officials, employees and agents shall be named as additional insureds by endorsement (on the City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no special limitations on the scope of protection given to the City, its officials, employees and agents.

(b) Workers' compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident.

(c) Professional liability errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

(d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less than Five Hundred Thousand Dollars (\$500,000) combined single limit per accident.

Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect the City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions. Each insurance policy shall be endorsed to state that coverage shall not be reduced in coverage, nonrenewed, or canceled except after thirty (30) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by the City, its officials, employees and agents. Consultant shall notify the City within five (5) days after any insurance required herein has been voided by the insurer or cancelled by the insured.

Consultant shall require that all contractors, subcontractors and sub-consultants which Consultant uses in the performance of services under the Purchase Order maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

Prior to the start of performance under the Purchase Order, Consultant shall deliver to City certificates of insurance and required endorsements, including any insurance required of Consultant's contractors, subcontractors and sub-consultants for approval as to sufficiency and form. The certificates and endorsements shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Consultant shall, at least thirty (30) days prior to expiration of the insurance required hereunder, furnish to the City certificates of insurance and endorsements evidencing renewal of such insurance. City reserves the right to require complete certified copies of all policies of Consultant and Consultant's contractors, subcontractors and sub-consultants at any time. Consultant and Consultant's contractors, subcontractors and sub-consultants shall make available to the City all books, records and other information relating to the insurance coverage required herein during normal business hours.

Any modification or waiver of the insurance requirements herein shall only be made with the written approval of the City's Risk Manager or designee. Not more frequently than once a year, the City's Risk Manager or designee may require that Consultant, Consultant's contractors, subcontractors and sub-consultants change the amount, scope or types of coverages required herein if, in his or her sole opinion, the amount, scope, or types of coverages herein are not adequate.

The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance of services or as full performance of or compliance with the indemnification provisions herein.

5. The Purchase Order contemplates the personal services of Consultant and Consultant's employees, and the parties acknowledge that a substantial inducement to City for entering it was and is the professional reputation and competence of Consultant and Consultant's employees. Consultant shall not assign any interest herein, or any portion hereof, without the prior approval of the City Manager, except that Consultant may with the prior approval of the City Manager assign any moneys due or to become due the Consultant hereunder. Any attempted assignment or delegation shall be void, and any

assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation. Furthermore, Consultant shall not subcontract any portion of the performance required hereunder without the prior approval of the City Manager or his designee. Nothing stated in this Section shall prevent Consultant from employing as many employees as Consultant deems necessary for performance hereunder.

6. Consultant, by signing these Additional Terms and Conditions, certifies and shall obtain similar certifications from Consultant's employees, approved subcontractors and approved sub-consultants that, at the time Consultant signs these Additional Terms and Conditions and during the term hereof, Consultant does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of City hereunder and the interests of such other client.

7. In addition to the items identified in Section 4 of the Purchase Order, Consultant shall furnish all supervision, tools, machinery, appliances, transportation, and services necessary to or used in the performance of Consultant's obligations hereunder.

8. All materials, information and data prepared, developed, or assembled by Consultant or furnished to Consultant in connection herewith, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples, models, reports, summaries, drawings, designs, notes, plans, information, material, and memoranda (hereinafter "Data") shall be the exclusive property of City. Data shall be given to City, and City shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to Consultant. Copies of Data may be retained by Consultant but Consultant warrants that Data shall not be made available to any person or entity for use without the prior approval of City. Said warranty shall survive termination of the Purchase Order for five (5) years. To the extent the Data is covered by copyright laws, then Consultant hereby assigns its ownership rights in said copyright and Data to the City reserving a nonexclusive license to use the Data with the prior approval of the City. Accountant work product shall remain property of Grobstein, Horwath & Company LLP.

9. Notwithstanding anything to the contrary in the Purchase Order, City shall have the right to terminate the Purchase Order for any reason or no reason at any time by giving five (5) calendar days' prior notice to Consultant. In the event of termination pursuant to this Section, City shall pay Consultant for services satisfactorily performed up to the effective date of termination for which Consultant has not been previously paid but City shall have no obligation to have Consultant perform services after notice of termination has been given. The procedures for payment above with regard to an itemized statement shall apply. On the effective date of termination, Consultant shall deliver to City all Data developed or accumulated in performance hereunder, whether in draft or final form, or in process.

10. Consultant shall keep the Data confidential and shall not disclose the Data or use the Data directly or indirectly other than in the course of services provided hereunder during the term of the Purchase Order and for five (5) years following expiration or termination hereof. In addition, Consultant shall keep confidential all information, whether written, oral, or visual, obtained by any means whatsoever in the course of Consultant's performance hereunder for the same period of time. Consultant shall not disclose any or all of the Data to any third party, nor use it for Consultant's own benefit or the benefit of others except for the purpose of the Purchase Order.

11. Consultant shall not be liable for a breach of confidentiality with respect to Data that:

- a. Consultant demonstrates Consultant knew prior to the time City disclosed it; or
- b. Is or becomes publicly available without breach of the Purchase Order by Consultant; or
- c. A third party who has a right to disclose does so to Consultant without restrictions on further disclosure; or
- d. Must be disclosed pursuant to subpoena or court order.

12. No provision or breach of the Purchase Order, including these Additional Terms and Conditions, shall be waived, except in writing signed by the parties which expressly refers to the Purchase Order.

13. The Purchase Order, including these Additional Terms and Conditions, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

14. Notwithstanding anything to the contrary in Section 7 of the General Conditions of the Purchase Order, Consultant shall, with respect to all services performed hereunder, indemnify and hold harmless the City, its Boards and commissions, and their officials, employees, and agents (collectively in this Section, "City") from and against any and all liability, claims, demands, damage, loss, causes of action, proceedings, penalties, costs and expenses (including but not limited to attorney's fees, court costs, and expert and witness fees)(collectively "Claims" or individually "Claim"). Claims include allegations and include by way of example but are not limited to: Claims for property damage, personal injury or death arising, in whole or in part, from any negligent act or omission of Consultant, its officers, employees, agents, invitees, sub-consultants, or anyone under Consultant's control (collectively "Indemnitor"); Consultant's breach of this Purchase Order and Additional Terms and Conditions; misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating in any way to worker's compensation. Independent of the indemnification duty and as a free-standing duty on the part of Consultant, Consultant shall defend City and shall continue such defense until the Claim is resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Indemnitor shall be required for the duty to defend to arise.

Consultant shall give to the City notice of any Claim within ten (10) calendar days. Likewise, the City shall notify Consultant of any Claim, shall tender the defense of such Claim to Consultant, and shall assist Consultant, as may be reasonably requested, in such defense.

15. In the event of any conflict or ambiguity between the Purchase Order and these Additional Terms and Conditions, the provisions of these Additional Terms and Conditions shall govern.

16. If there is any legal proceeding between the parties to enforce or interpret the Purchase Order, including these Additional Terms and Conditions, or to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorneys' fees.

17. Any notice or approval required hereunder by either party shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid to City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager and to Consultant at the address shown on the Purchase Order. Notice of change of

address shall be given in the same manner as stated herein for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever first occurs.

18. The acceptance of any services or payment of any money by City shall not operate as a waiver of any provision hereof, or of any right to damages or indemnity stated herein. The waiver of any breach hereof shall not constitute a waiver of any other or subsequent breach.

19. City shall have the right at all reasonable times during the term hereof and for a two-year period following completion of Consultant's performance hereunder or following termination hereof to examine, audit, inspect, review, extract information from, and copy all books, records, accounts and other documents relating hereto.

20. The parties acknowledge that a substantial inducement to City for entering the Purchase Order was and is the reputation and skill of Consultants at Grobstein, Horwath & Company LLP.

21. Termination or expiration of the Purchase Order shall not affect rights or liabilities which accrued under the Purchase Order or these Additional Terms and Conditions prior to termination or expiration of the Purchase Order, and shall not extinguish any warranties hereunder.

22. As required by federal and state law, City is obligated and will report the payment of compensation to Consultant on Form 1099-Misc. Consultant shall be solely responsible for payment of all federal and state taxes resulting from payments hereunder. Consultant's Employer Identification Number is [REDACTED]. If Consultant has a Social Security Number rather than an Employer Identification Number, then Consultant shall submit that Social Security Number in writing to City's Accounts Payable Division, Department of Financial Management. Consultant acknowledges and agrees that City has no obligation to pay Consultant hereunder until Consultant provides one of the aforesaid Numbers.

23. Consultant acknowledges and agrees that the services to be performed hereunder do not constitute a peculiar risk of bodily harm and that no special precautions are required to perform said services.

24. The Purchase Order is intended by the parties to benefit themselves only and is not in any way intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to the Purchase Order.

25. Consultant shall not use the name of City, its officials or employees in any advertising or solicitation for business, nor as a reference, without the prior approval of the City Manager or designee.

26. Subject to federal laws, rules and regulations, Consultant shall not discriminate in employment or in the performance of this Purchase Order on the basis of race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability.

Consultant acknowledges and agrees to these Additional Terms and Conditions by signing below. Consultant shall return these Additional Terms and Conditions to the City after execution. The Purchase Order shall not be valid until the City has received these

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signed Additional Terms and Conditions.

Consultant's Signature,
if an individual:

Consultant's Name,
if a corporation

By _____
President

By _____
Secretary

Consultant's Name,
if a limited liability partnership

Grobstein Horwath & Company LLP

By  _____
Partner

Consultant's Name,
if a limited liability company

By _____
Manager or Member