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HARBOR DEPARTMENT  
AGREEMENT 2519.  
CITY OF LOS ANGELES

**AGREEMENT FOR PROFESSIONAL LEGAL SERVICES**

**BETWEEN AND AMONG**

**THE CITY OF LOS ANGELES,**

**THE CITY OF LONG BEACH**

**AND**

**KAYE SCHOLER, LLP**

## **AGREEMENT FOR PROFESSIONAL LEGAL SERVICES**

THIS AGREEMENT, Contract Number 2519, is made and entered into by and between and among the City of Los Angeles ("City of LA"), a municipal corporation, acting by and through its Board of Harbor Commissioners, the City of Long Beach ("City of LB"), a municipal corporation, acting by and through its Board of Harbor Commissioners and Kaye Scholer, LLP ("Outside Counsel"), with reference to the following:

### **RECITALS**

**WHEREAS**, the Office of the Los Angeles City Attorney ("LA City Attorney") and the Los Angeles City Council and Board enumerated in Los Angeles City Charter Section 272(c) have approved the use of Outside Counsel to assist the LA City Attorney with legal representation in the matter of the Clean Air Action Plan; and

**WHEREAS**, the Office of the Long Beach City Attorney ("LB City Attorney") and the Long Beach City Council and Board enumerated in Long Beach City Charter Section 603 have approved the use of Outside Counsel to assist the LB City Attorney with legal representation in the matter of the Clean Air Action Plan; and

**WHEREAS**, the LA City Attorney and the LB City Attorney (collectively the "City Attorneys") have entered into an agreement which provides for the equal sharing of legal costs for certain shared legal services, and for the joint legal defense with respect to legal matters arising out of the Clean Air Action Plan, on behalf of their respective clients, the City of LA Harbor Department and its Board of Harbor Commissioners and the City of LB Harbor Department and its Board of Harbor Commissioners (collectively, the "Cities").

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

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

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

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

#### **I. SCOPE OF REPRESENTATION AND PARTNERING**

Outside Counsel is retained to assist the City Attorneys in providing legal representation for the Cities in the matter of the Clean Air Action Plan. Outside Counsel shall at all times work under the direction of the City Attorneys. The Cities and City

Attorneys shall rely on the competence, expertise and experience of Outside Counsel. At all times, Outside Counsel shall provide professional legal advice and services at the highest level expected of law firms providing legal services in the Los Angeles and Long Beach region. This is a non-exclusive agreement to provide legal services to the Cities and, at the City Attorneys' discretion, the Cities may augment the services with another law firm or law firms, or select to terminate Outside Counsel's services in a manner consistent with this Agreement.

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

## **II. GENERAL CONDITIONS**

### **A. Period of Performance**

This Agreement shall begin on January 4, 2007 and shall continue until January 3, 2010, unless terminated earlier under the provisions of this Agreement.

### **B. Termination or Suspension of Legal Services**

#### **1. Termination/Suspension For Cities' Convenience**

a) Services performed under this Agreement may be terminated or suspended in whole or in part at any time by City Attorneys. City Attorneys 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 Attorneys, Outside Counsel shall:

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

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

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

1) 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

2) If Outside Counsel fails to submit a final billing within the time allowed, City Attorneys may determine the amount, if any, to be paid to Outside Counsel. Outside Counsel agrees that City Attorneys' determination shall be final.

2. Termination For Outside Counsel's Default

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

1) Fails to perform the service(s) within the specified time period; or

2) Fails to perform any of the provisions contained in this Agreement; or

3) Fails to make adequate progress in the matter and endangers the performance of this Agreement's terms.

b) If City Attorneys wholly or partially terminate services under this Agreement, City Attorneys may obtain alternative legal services with terms and in a manner City Attorneys deem appropriate. In addition to any other remedies provided by this Agreement, law or equity, Outside Counsel shall be liable to Cities for any excess costs associated with obtaining and utilizing alternative legal services.

3. Closing Report Upon Termination

a) If requested by City Attorneys, Outside Counsel shall deliver a Closing Report within two days of the termination of services.

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

1) A brief description of the facts of the case;

2) A discussion of applicable law;

3) A description of the status of the case; and

4) A list and description of future scheduled court appearances.

c) Outside Counsel shall give City Attorneys all evidence, files and attorney work product for every matter in which Outside Counsel is substituted out as attorney of record. This includes any computerized

Attorneys.

C. Independent Contractor Status

This Agreement is between Cities and Outside Counsel and is not intended, and shall not be construed, to create, as between Cities 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 Cities under this Agreement are employees solely of Outside Counsel and not Cities. Outside Counsel shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any Outside Counsel personnel for injuries arising from services performed under this Agreement.

D. Ownership of Documents

All information, documents, records, reports, data, or other materials furnished to Outside Counsel or other such information, documents, records, data or other materials to which Outside Counsel has access during their performance pursuant to this Agreement are deemed confidential and shall remain the property of Cities. 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 Attorneys.

E. Insurance

Outside Counsel shall comply with the insurance requirements described in the Standard Provisions For City Contracts, attached hereto as Exhibit A, having the coverage and limits as specified in PSC-18, provided, however, that professional liability insurance shall be subject to availability on the open market at reasonable rates. Non-availability must be documented by a letter from Outside Counsel's insurance broker or agent certifying a good faith effort to obtain the required insurance and listing the names of the carriers approached along with the quotations or declarations received. Such documentation shall be subject to acceptance by Cities after review by City Attorneys and the Cities' Risk Managers. If Outside Counsel does not obtain professional liability insurance or maintain the insurance throughout the duration of this Agreement, City Attorneys may terminate the Agreement.

F. 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.

G. Validity

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

G. 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.

H. 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.

I. Remedies Reserved to Cities

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

J. 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.

K. Changes and Written Amendment of Terms

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

**III. OUTSIDE COUNSEL'S SERVICES AND RESPONSIBILITIES**

A. Professional Ethics and Conflicts of Interest

Cities recognize that Outside Counsel may have clients that, from time to time, may have interests adverse to Cities. 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 Attorneys' Conflicts Attorneys of any actual or potential conflict of interest that exists during Outside Counsel's engagement under this Agreement. The request for waiver shall describe in detail the nature of the proposed engagement by Outside Counsel, the nature of the conflict, and why Outside Counsel believes a waiver is appropriate.

B. Key Outside Counsel Personnel

1. Outside Counsel's Supervising Attorney for this Agreement shall be Steve Rosenthal. Outside Counsel's Supervising Attorney shall not be changed without City Attorneys' written authorization.

2. Outside Counsel's Supervising Attorney shall have full authority to act for Outside Counsel on all daily operational matters under this Agreement and shall serve as or designate Lead Counsel for all law and motion appearances, pretrial and trial proceeding(s), settlement conference(s) or meetings of counsel for the litigants, depositions, document productions, and all court and other proceedings in which substantive rights of the parties may be determined. Designation of a Lead Counsel other than the Supervising Attorney shall be subject to City Attorneys' prior written approval.

C. Legal Representation

1. Outside Counsel shall provide Cities with the necessary representation by qualified staff at the least costly billing category. Partners and associates shall be admitted to practice law before all of the courts of the State of California. The names of personnel authorized to provide services under this Agreement are as follows:

Partners:	Steve Rosenthal	\$395 per hour
	David Bickart	\$395 per hour
	Jonathan Benner	\$395 per hour
	Randy Brogdon	\$395 per hour
Counsel:	Brian Delgadillo	\$330 per hour
	Douglas Tucker	\$330 per hour
	Irv Hepner	\$330 per hour
	Matthew Thomas	\$330 per hour
Associates:	Jason Jarvis	\$270 per hour
	J.D. Taliaferro	\$240 per hour
	Virgina Balestrieri	\$240 per hour
	Erika Benson	\$240 per hour
Paralegals:		\$ 90 per hour

Any use of personnel other than as enumerated shall be subject to the prior written approval of City Attorneys' Supervising Attorney. Outside Counsel may hire consultants, but only with the prior written approval of City Attorneys' Supervising Attorney. Outside Counsel may retain other law firms or attorneys as subcontractors to provide the legal services covered by this Agreement, but only with the prior written approval of the Chief Deputy City Attorney. Any such written approval of subcontractors must set

forth the name of each approved attorney or other personnel and the agreed rate for such individual. Outside Counsel will require any such subcontractors or consultants to comply with the terms and conditions of this Agreement and will indemnify, defend and forever hold harmless the Cities from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of any act or omission of any such subcontractors or consultants.

2. Outside Counsel's legal representation shall include, but is not limited to:

- a) All settlement negotiations and pretrial proceedings;
- b) Appearances at all law and motion hearings, discovery proceedings, hearings regarding orders to show cause, writs, trials, and, when applicable, administrative hearings;
- c) All due diligence, legal research, preparation for hearings, and review of all documents and other evidentiary materials;
- d) Investigative, secretarial, and clerical support services necessary to perform the legal representation in a professional manner.

3. Outside Counsel shall provide all required reports referenced in this Agreement.

4. Outside Counsel shall meet with City Attorneys as City Attorneys require.

5. Outside Counsel shall obtain written approval from City Attorneys before retaining any consultant or expert witness to assist with any assigned case.

6. Outside Counsel shall obtain prior approval from City Attorneys for travel outside the Counties of: Los Angeles, Orange, Riverside, Imperial, Kern, San Bernardino, Ventura or Santa Barbara. Unapproved travel will not be reimbursed.

7. Outside Counsel shall consult with City Attorneys on trial and tactical decisions.

8. Outside Counsel shall assist City Attorneys' Supervising Attorney in settlement evaluations and negotiations, and shall obtain City Attorneys' authority before making any settlement proposal on Cities' behalf



to the Court or any party.

9. Outside Counsel shall immediately notify City Attorneys, in writing, when a judgment, verdict or other award is rendered.

10. Upon City Attorneys' request, Outside Counsel shall provide copies of all court rulings and all pleadings filed with the court or other administrative body, including those submitted by other parties.

11. Outside Counsel shall maintain all backup documentation to support all entries included in its billings.

**D. Reporting Requirements**

Depending on the nature of the matter and the benefit derived, City Attorneys may request that Outside Counsel provide City Attorneys with the following reports:

**1. Case Evaluation and Plan**

a) The Case Evaluation and Plan is a written independent evaluation of the case that can be used to develop Cities' legal position and strategy. It will also serve to assist in controlling litigation costs. Outside Counsel shall base the Case Evaluation and Plan on a review of the pleadings, discovery, reports and other documents, physical evidence, conversations with City Attorneys and any other information Outside Counsel deems appropriate based on Outside Counsel's expertise and experience.

b) The Case Evaluation and Plan shall include, but is not limited to:

1) Statement of known facts and identified legal issues, including identities of opposing attorney(s), if known;

2) Statement of precedent-setting or sensitive issues, if applicable;

3) Statement of alleged and probable injuries and damages;

4) Statement of liability exposure;

5) Statement of recommendation(s) on case strategy, including discovery, motions, extent of legal research, consultants and percipient witnesses, experts to be retained, and the extent of expert services to be performed;

6) **Statement of Outside Counsel's projected costs that can be reasonably anticipated. Costs shall be budgeted on a total, annualized basis and shall include, but are not limited to:**

(a) **Attorney fees - an identification of the staffing levels, hourly rates and estimated number of hours for each partner, associate, and/or paralegal;**

(b) **Consultant and expert witness rates, and estimated number of hours each will be needed;**

(c) **Deposition, transcript and other expenses;**

(d) **Fees and expenses for handling the case through each of the following applicable stages:**

(1) **Pleadings**

(2) **Discovery**

(3) **Pretrial conference(s)**

(4) **Mediation or Arbitration**

(5) **Trial, and**

(6) **Any other identified stages.**

2. **Proposed Settlement Recommendations**

a) **If requested by City Attorneys, Outside Counsel shall submit to City Attorneys' written settlement recommendations that clearly state the reasons supporting a proposed settlement.**

3. **Appellate Action**

a) **If requested by City Attorneys, Outside Counsel shall submit to City Attorneys recommendations as to whether to appeal or petition for other review, or defend in the appellate courts. Outside Counsel shall state clearly the reason(s) supporting the recommended action.**

b) **Outside Counsel shall list City Attorneys as co-counsel**

with Outside Counsel on all briefs and papers submitted to the appellate courts or other reviewing body.

#### **IV. CITIES' DUTIES AND RESPONSIBILITIES**

##### **A. Key City Personnel**

1. Cities each hereby appoint the respective City Attorneys representing such City, or his or her designee, to represent each City on all matters related to this Agreement; however, any written amendment to this Agreement requiring additional funds shall be conditioned upon the approval of the additional appropriation of said funds by the Los Angeles City Council and Board enumerated in Los Angeles City Charter Section 272(c) and Long Beach City Council and Board enumerated in Long Beach City Charter Section 603. The City Attorneys' Supervising Attorneys shall be General Counsel Thomas Russell, Assistant General Counsel Joy Crose and Principal Deputy City Attorney Dominic Holzhaus. On all matters relating to invoices the City Attorneys' representative shall be Jennifer Krieger, the LA City Attorney's Chief Financial and Administrative Officer.

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

3. Approval of proposed settlement recommendations is subject to Cities' settlement approval procedures.

#### **V. COMPENSATION**

##### **A. Appropriation of Funds.**

The Los Angeles Board of Harbor Commissioners and the Long Beach Board of Harbor Commissioners have appropriated a total of Five Hundred Thousand Dollars (\$500,000) for this Agreement. Outside Counsel's work pursuant to this Agreement shall not exceed that amount without the prior written approval of City Attorneys. The Cities are not obligated to pay Outside Counsel for any work done and/or costs incurred in excess of the appropriated amount unless additional appropriations are made and a written amendment to this Agreement is executed by the parties.

##### **B. Outside Counsel's Obligation For Continued Performance.**

In the event that Outside Counsel's fees, costs and expenses, in the aggregate, exceed the amount appropriated by Cities 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 Cities shall not be liable for fees or costs in excess of the amount appropriated, unless the appropriated amount is increased as provided herein. Outside Counsel shall be responsible for notifying City Attorneys' 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 Cities desire further work. Outside Counsel shall give written notice to City Attorneys' Supervising Attorney and to Jennifer Krieger, the LA City Attorney's Chief Financial and Administrative Officer, when Outside Counsel's expenditures under this Agreement are equal to sixty percent (60%) and eighty percent (80%) of the total dollar value appropriated for this Agreement so that City Attorneys have sufficient time to consider whether they desire to seek an additional appropriation and written amendment to the Agreement.

C. Fees

1. The Cities shall pay Outside Counsel for the services performed by Outside Counsel which are reasonably necessary. The fees for such services shall be based upon the time expended to render the required services, with fractions thereof being stated to the tenth of an hour, and shall be computed at a rate not to exceed the following:

Partner	\$395.00 per hour
Counsel	\$395.00 per hour
Associate	\$295.00 per hour
Paralegal	\$ 90.00 per hour

2. Billing rates may be increased with the prior written approval of the Los Angeles Chief Deputy City Attorney and Long Beach City Attorney only.

D. Cities' Reservation of Rights to Obtain Reimbursement

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

E. Expenses

Absent the express prior written approval of the appropriate City Attorneys' Supervising Attorney, the Cities will not pay for any extraordinary expenses incurred

in any legal matter. The Los Angeles City Attorney's Chief Financial and Administrative Office must approve in writing any item of expense that exceeds \$5,000. The City Attorneys' Supervising Attorneys 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 Cities will not pay for business class or first class airfare or luxury hotels. Cities 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 Cities are exempt from all filing fee charges.

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

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

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

c) Transcript fees;

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

e) Facsimile/Telecopier (FAX) transmission - Outside Counsel shall not bill the Cities for any expense related to facsimile charges beyond Outside Counsel's actual net costs for long distance telephone charges actually and reasonably incurred by Outside Counsel for the sending of facsimiles. Outside Counsel shall indicate in its billing statements the number of pages transmitted via facsimile together with the related cost of each charge. Outside Counsel shall attach the appropriate receipts, invoices or proof of any expenditure for your charges for facsimiles.

f) Process service;

g) In-house document reproduction. Outside Counsel may charge up to \$0.10 cents per page for photocopies. The billing statement shall contain the total number of copies made.

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

a) Consultants;

b) Expert witnesses;

c) Investigative services;

d) Computer Assisted Legal Research ("CALR") -- The Cities' decision to retain a particular firm is based in part on the firm's expertise and knowledge. The Cities therefore assumes familiarity with the basic substantive law at issue in the matter for which the firm was retained; any except to this general expectation should be discussed fully at the time of retention. In conducting legal research the law firm is expected to utilize all appropriate sources reasonably available, including previously prepared briefs and memoranda. Should Outside Counsel determine that it is necessary to incur CALR charges in order to satisfy the terms of this Agreement, Outside Counsel shall obtain City Attorneys' Supervising Attorneys' prior written approval to charge for such expenses. No charges for CALR shall be paid by the Cities without its prior written approval of such a charge.

e) Outside Counsel shall describe in detail in its billings any travel expenses incurred by Outside Counsel. Cities retain 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 Attorneys' prior written approval.

Lodging - If a receipt is submitted, a single occupancy hotel accommodation will be reimbursed up to a maximum of \$165.50 plus taxes. For trial attendance by out-of-town experts or consultants, this rate may be increased, depending on the availability of lodging and prior City Attorneys' written approval.

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

F. Most Favored Nations

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

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

VI. BILLINGS AND PAYMENTS

A. Billings

1. Outside Counsel shall submit its billing statement monthly in arrears, no later than the tenth of the month following the month service was rendered.
2. Outside Counsel and City Attorneys recognize that legal services performed under this Agreement are being paid for with tax dollars from the citizens

of the Cities and that, therefore, a heightened duty of care exists in both Outside Counsel and City Attorneys to ensure that Outside Counsel scrupulously adheres to principles of moderation, frugality and cost consciousness in carrying out the goals of this Agreement. Outside Counsel pledges to observe a duty of reasonableness and cost effective representation in all aspects of this Agreement. Accordingly, each billing statement shall contain a certification by Outside Counsel's Supervising Attorney that the services performed and the expenses incurred were both reasonable and necessary.

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

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

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

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



6. Each billing statement shall be identified by a unique number and itemized to include:

- a) Case name, and case number;
- b) Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal;
  - 1) Each activity shall be billed in a reporting format acceptable to City Attorneys.
  - 2) A detailed description of specific activities for each attorney and/or paralegal shall include, but is not limited to:
    - (a) In-person conferences.
    - (b) Telephone call(s).
    - (c) Correspondence.
    - (d) Depositions.
    - (e) Case reports.
    - (f) Pleading, brief or opinion drafting.
    - (g) Hearings.
    - (h) Research, including computerized legal research databases.
      - (i) Case reviews.
      - (j) Trials.
      - (k) Travel.
- c) Total current monthly fees billed for each staffing level;
- d) Total cumulative fees billed for each staffing level;
- e) Total current monthly expenses billed in the following categories:
  - 1) Consultant and expert witness expenses;

- 2) Deposition and transcript expenses;
  - 3) Other miscellaneous expenses.
- f) Total cumulative expenses to date billed in (e) above.

**B. Payments**

1. Cities shall make payment(s) for services rendered under this Agreement based on the monthly, itemized billing statement(s) Outside Counsel submits to City Attorneys.
2. City Attorneys' legal and accounting staff shall review all billing statements in accordance with Cities' review procedures.
3. Cities shall make their best effort to process payments promptly after receiving Outside Counsel's monthly billing statement. Cities 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 Attorneys, at their 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 Attorneys and/or their auditors access to records and files maintained by Outside Counsel and the third part

**VII. NOTICES**

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

- A. If invoice to City Attorneys:

City of Los Angeles  
Office of the City Attorney

200 North Main Street,  
8<sup>th</sup> Floor, City Hall East  
Los Angeles, California 90012-4130  
Attention: Candy Pabalan, Business Office

With a copy to:  
City of Los Angeles  
Office of the City Attorney  
425 South Palos Verdes Street  
San Pedro, CA 90731  
Attention: Kimberly Hee

City of Long Beach  
Office of the City Attorney  
333 West Ocean Boulevard, 8<sup>th</sup> Floor  
Long Beach, CA 90802  
Attention: Dominic Holzhaus, Principal Deputy City Attorney

If notice or a report to City Attorneys:

City of Los Angeles  
Office of the City Attorney  
425 South Palos Verdes Street  
San Pedro, CA 90731  
Attention: Thomas Russell, General Counsel  
Joy Crose, Assistant General Counsel

City of Long Beach  
Office of the City Attorney  
333 West Ocean Boulevard, 8<sup>th</sup> Floor  
Long Beach, CA 90802  
Attention: Dominic Holzhaus, Principal Deputy City Attorney

If notice concerning conflict of interest to City Attorneys:

City of Los Angeles  
Office of the City Attorney  
200 North Main Street,  
8<sup>th</sup> Floor, City Hall East  
Los Angeles, California 90012-4130  
Attention: Camilla Eng

City of Long Beach  
Office of the City Attorney  
333 West Ocean Boulevard, 8<sup>th</sup> Floor

Long Beach, CA 90802  
Attention: Dominic Holzhaus, Principal Deputy City Attorney

B. If notice to Outside Counsel:

Kaye Scholer, LLP  
Attention: Steve Rosenthal  
Outside Counsel's Supervising Attorney  
The McPherson Building  
901 Fifteenth Street, N.W.  
Suite 1100  
Washington, DC 20005-2327

**VIII. ASSIGNMENT**

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

B. Any attempt by Outside Counsel to assign or subcontract services relating to this Agreement without Cities' prior written consent shall constitute a material breach of this Agreement.

**IX. STANDARD TERMS AND CONDITIONS**

Standard terms and conditions for Cities' outside legal services contracts are attached as Exhibit A.

**X. MERGER**

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

**XI. ORDER OF PRECEDENCE**

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

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

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

By   
Executive Director


Date 3-7-07

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

By   
Executive Director

Date 6/27/07

THE CITY OF LONG BEACH,  
a municipal corporation,

By   
City Manager

Date March 2, 2007

KAYE SCHOLER, LLP

By   
Steve Rosenthal

Date \_\_\_\_\_

APPROVED AS TO FORM  
ROCKARD J. DELGADILLO, Los Angeles City Attorney

By   
Camilla Eng, Deputy City Attorney

Date February 16, 2007

Los Angeles City Business License Number: \_\_\_\_\_  
Internal Revenue Service ID Number: \_\_\_\_\_  
Council File/CAO File Number: \_\_\_\_\_  
Contract Number: \_\_\_\_\_

APPROVED AS TO FORM  
ROBERT E. SHANNON, Long Beach City Attorney

By *Dominic Holzhaus*  
Dominic Holzhaus, Principal Deputy City Attorney

Date 2/27/07

The City Attorney of the City of Los Angeles does hereby give his approval to the written professional agreement for the employment of the firm of Kaye Scholer, LLP by the Harbor Department as set forth above.

Dated: 6/29/07 By: *Rockard J. Delgadillo*  
ROCKARD J. DELGADILLO  
City Attorney of the City of Los Angeles

Account #	54410	W.O. #	
Ctr/Div #	120	Job Fac. #	
Proj/Prog #			
Budget FY:		Amount:	
2006-07		\$332,109	
2007-08		\$134,313	
2008-09		\$33,578	
TOTAL		\$500,000	
For Acct Div. Use Only:			
Verified Funds Available			
DATE APPROVED: <u><i>6/29/07</i></u>			

**Exhibit A**

**STANDARD PROVISIONS FOR CITY  
CONTRACTS**

**PSC-1. Construction of Provisions and Titles Herein.**

All titles or subtitles appearing herein have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the CITY or the CONTRACTOR. The word "CONTRACTOR" or "CONSULTANT" herein and in any amendments hereto includes the party or parties identified in the Contract wherein this Appendix is incorporated by reference; the singular shall include the plural; if there shall be more than one CONTRACTOR/CONSULTANT herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several; use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

**PSC-2. Number of Originals.**

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party.

**PSC-3. Applicable Law, Interpretation and Enforcement.**

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California. CONTRACTOR/CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

If any part, term or provision of this Contract shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Contract, the validity of the remaining parts, terms or provisions of the Contract shall not be affected thereby.

**PSC-4. Time of Effectiveness.**

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of the **CONTRACTOR/CONSULTANT** by the person or persons authorized to bind the **CONTRACTOR/CONSULTANT** hereto;
- B. This Contract has been approved by the **CITY'S** Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form;
- D. This Contract has been signed on behalf of the **CITY** by the person designated to so sign by the **CITY'S** Council or by the board, officer or employee authorized to enter into this Contract.

**PSC-5. Integrated Contract.**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

**PSC-6. Amendment.**

All amendments hereto shall be in writing and signed by the persons authorized to bind the parties thereto.

**PSC-7. Excusable Delays.**

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires, floods; epidemics; quarantine restrictions; strikes, freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

**PSC-8. Breach.**

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any



representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

**PSC-9. Waiver.**

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

**PSC-10. Independent CONTRACTOR/CONSULTANT.**

The CONTRACTOR/CONSULTANT is acting hereunder as an independent contractor and not as an agent or employee of the CITY. The CONTRACTOR/CONSULTANT shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY.

**PSC-11. Prohibition Against Assignment or Delegation.**

The CONTRACTOR/CONSULTANT may not, unless it has first obtained the written permission of the CITY;

- A. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

**PSC-12. Permits.**

The CONTRACTOR/CONSULTANT and its officers, agents and employees shall obtain and maintain all licenses, permits, certifications and other documents necessary for the CONTRACTOR'S/CONSULTANT'S performance hereunder and shall pay any fees required therefor. CONTRACTOR/CONSULTANT certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

**PSC-13. Nondiscrimination and Affirmative Action.**

The CONTRACTOR/CONSULTANT shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, the

**CONTRACTOR/CONSULTANT** shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. The **CONTRACTOR/CONSULTANT** shall comply with the provisions of the Los Angeles Administrative Code Sections 10.8 through 10.13, to the extent applicable hereto. The **CONTRACTOR/CONSULTANT** shall also comply with all rules, regulations, and policies of the **CITY'S** Board of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by said Office. Any subcontract entered into by the **CONTRACTOR/CONSULTANT** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph. Failure of the **CONTRACTOR/CONSULTANT** to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject the **CONTRACTOR/CONSULTANT** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR/CONSULTANT'S** contract with the **CITY**.

**PSC-14. Claims for Labor and Materials.**

The **CONTRACTOR/CONSULTANT** shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible matter produced by the **CONTRACTOR/CONSULTANT** hereunder), against the **CONTRACTOR'S/CONSULTANT'S** rights to payments hereunder, or against the **CITY**, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

**PSC-15. Current Los Angeles City Business Tax Registration Certificate Required.**

The **CONTRACTOR/CONSULTANT** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance (Article 1, Chapter 2, sections 21.00 and following, of the Los Angeles Municipal Code). For the term covered by this Contract, the **CONTRACTOR/CONSULTANT** shall maintain, or obtain as necessary, all such Certificates required of it under said ordinance and shall not allow any such Certificate to be revoked or suspended.

**PSC-16. Bonds.**

Duplicate copies of all bonds which may be required hereunder shall conform to **CITY** requirements established by Charter, ordinance or policy and shall be filed with

the Office of the City Attorney for its review in accordance with Los Angeles Administrative Code Sections 11.47 through 11.56.

**PSC-17. Indemnification.**

Except for the active negligence or willful misconduct of **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR/CONSULTANT** undertakes and agrees to defend, indemnify and hold harmless **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 and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S/CONSULTANT'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 Contract by the **CONTRACTOR/CONSULTANT** or its **SUBCONTRACTORS** of any tier. The provisions of this paragraph survive expiration or termination of this Contract.

**PSC-18. Insurance.**

**A. General Conditions**

During the term of this Contract and without limiting **CONTRACTOR'S/CONSULTANT'S** indemnification of the **CITY**, **CONTRACTOR/CONSULTANT** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR/CONSULTANT** but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR in Exhibit 1 hereto, covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the instructions set forth on Form General 133 and with the conditions set forth on the applicable City Special Endorsement form(s), copies of which are included in Exhibit 1, and shall otherwise be in a form acceptable to the City Attorney. Specifically, such insurance shall: 1) protect **CITY** as an Insured or an Additional Interest Party, or a Loss Payee As Its Interests May Appear, respectively, when such status is appropriate and available depending on the nature of the applicable coverages; 2) provide **CITY** at least thirty (30) days advance written notice of cancellation, material reduction in coverage or reduction in limits when such change is made at the option of the Insurer; and 3) be primary with respect to **CITY'S** insurance program. Except when **CITY** is a named

insured, **CONTRACTOR'S/CONSULTANT'S** insurance is not expected to respond to claims which may arise from the acts or omissions of the **CITY**.

**B. Modification of Coverage**

**CITY** reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving **CONTRACTOR/CONSULTANT** ninety (90) days advance written notice of such change. If such change should result in substantial additional cost to the **CONTRACTOR/CONSULTANT**, **CITY** agrees to negotiate additional compensation proportional to the increased benefit to **CITY**.

**C. Failure to Procure Insurance**

All required insurance must be submitted and approved by the City Attorney prior to the inception of any operations or tenancy by **CONTRACTOR/CONSULTANT**. The required coverages and limits are subject to availability on the open market at reasonable cost as determined by **CITY**. Non-availability or non-affordability must be documented by a letter from **CONTRACTOR'S/CONSULTANT'S** insurance broker or agent indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each.

Within the foregoing constraints, **CONTRACTOR'S/CONSULTANT'S** failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which **CITY** may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect **CITY'S** interests and pay any and all premiums in connection therewith and recover all monies so paid from **CONTRACTOR/CONSULTANT**.

**D. Worker's Compensation**

By signing this Contract, **CONTRACTOR/CONSULTANT** hereby certifies that it is aware of the provisions of Section 3700 et seq., of the Labor Code which require 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 it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract.

A Waiver of Subrogation in favor of CITY will be required when work is performed on CITY premises under hazardous conditions.

**PSC-19. Child Support Assignment Orders.**

This Contract is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code. Pursuant to this Ordinance, **CONTRACTOR/CONSULTANT** certifies that it will (1) fully comply with all State and Federal employment reporting requirements applicable to Child Support Assignment Orders; (2) that the principal owner(s) of **CONTRACTOR/CONSULTANT** are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230, et seq.; and (4) maintain such compliance throughout the term of this Contract. Pursuant to Section 10.10:b of the Los Angeles Administrative Code, failure of **CONTRACTOR/CONSULTANT** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of **CONTRACTOR/CONSULTANT** to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default by the **CONTRACTOR/CONSULTANT** under the terms of this Contract, subjecting this Contract to termination where such failure shall continue for more than ninety (90) days after notice of such failure to **CONTRACTOR/CONSULTANT** by **CITY**. Any subcontract entered into by the **CONTRACTOR/CONSULTANT** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph and shall incorporate the provisions of the Child Support Assignment Orders Ordinance. Failure of the **CONTRACTOR/CONSULTANT** to obtain compliance of its subcontractors shall constitute a default by the **CONTRACTOR/CONSULTANT** under the terms of this Contract, subjecting this Contract to termination where such failure shall continue for more than ninety (90) days after notice of such failure to **CONTRACTOR/CONSULTANT** by the **CITY**.

**CONTRACTOR/CONSULTANT** shall comply with the Child Support Compliance Act of 1998 of the State of California Employment Development Department. **CONTRACTOR/CONSULTANT** assures that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in subdivision (1) of the Public Contract Code 7110.

**PSC-20. Living Wage Ordinance and Service Contractor Worker Retention Ordinance.**

A. Unless otherwise exempt in accordance with the provisions of these Ordinance, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO) Section 10.37 et. seq. of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time. The Ordinances require the following:

1. **CONTRACTOR/CONSULTANT** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits as defined in the LWO.
2. **CONTRACTOR/CONSULTANT** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR/CONSULTANT** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR/CONSULTANT** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S/CONSULTANT'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of the **CONTRACTOR/CONSULTANT** with respect to such pledges and fully discharge the obligation of the **CONTRACTOR/CONSULTANT** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The **CONTRACTOR/CONSULTANT**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR/CONSULTANT** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.

4. Any subcontract entered into by the **CONTRACTOR/CONSULTANT** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-20 and shall incorporate the provisions of the LWO and the SCWRO.
  5. **CONTRACTOR/CONSULTANT** shall comply with all rules, regulations and policies promulgated by the designated administrative agency which may be amended from time to time.
- B. Under the provisions of Section 10.36.3(c) and Section 10.37.5(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR/CONSULTANT** has violated provisions of either the LWO or the SCWRO or both.
- C. Where under the LWO Section 10.37. 6(d), the designated administrative agency has determined (a) that the **CONTRACTOR/CONSULTANT** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the awarding authority in such circumstances may impound monies otherwise due the **CONTRACTOR/CONSULTANT** in accordance with the following procedures. Impoundment shall mean that from monies due the **CONTRACTOR/CONSULTANT**, the awarding authority may deduct the amount determined to be due and owing by the **CONTRACTOR/CONSULTANT** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6 (d) (3) and disposed of under procedures described therein through final and binding arbitration. Whether the **CONTRACTOR/CONSULTANT** is to continue work following an impoundment shall remain in the unfettered discretion of the awarding authority. The **CONTRACTOR/CONSULTANT** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

#### Earned Income Tax Credit

This Contract is subject to the provisions of Section 10.37.4 of the Los Angeles Administrative Code, requiring employers to inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Tax Credit (EITC). Employers must further

make available to employees the forms required to secure advance EITC payments from employers.

**PSC- 21. Americans with Disabilities Act.**

The **CONTRACTOR/CONSULTANT** hereby certifies that it will comply with the Americans with Disabilities Act 42, U.S.C. Section 12101 et seq., and its implementing regulations. The **CONTRACTOR/CONSULTANT** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. The **CONTRACTOR/CONSULTANT** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the **CONTRACTOR/CONSULTANT**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

**PSC- 22. Retention of Records, Audit and Reports.**

**CONTRACTOR/CONSULTANT** shall maintain records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with requirements prescribed by the **CITY**. These records shall be retained for a period of no less than three years following final payment made by the **CITY** hereunder or the expiration date of this contract, whichever occurs last. Said records shall be subject to examination and audit by authorized **CITY** personnel or by the **CITY**'s representative at any time during the term of this contract or within the three years following the final payment made by the **CITY** hereunder or the termination date of this contract, whichever occurs last. **CONTRACTOR/CONSULTANT** shall provide any reports requested by the **CITY** regarding performance of this Contract.

**PSC-23. Discount Terms**

**CONTRACTOR/CONSULTANT** agrees to offer the **CITY** any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discount to payments made under this Agreement which meet the discount terms.

**PSC-24. Contractor Responsibility Ordinance**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, which requires **CONTRACTOR/CONSULTANT** to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously



provided if such change would affect **CONTRACTOR'S/CONSULTANT'S** fitness and ability to continue performing the contract. In accordance with the provisions of this Ordinance, by signing this Contract, **CONTRACTOR/CONSULTANT** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. The **CONTRACTOR/CONSULTANT** further agrees to: 1) notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the **CONTRACTOR/CONSULTANT** is not in compliance with all applicable federal, state and local laws in performance of this contract; 2) notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the **CONTRACTOR/CONSULTANT** has violated the provisions of Section 10.40.3(a) of the Ordinance; 3) ensure that its subcontractor(s), as defined in the Ordinance, submit a Pledge of Compliance to awarding authorities; and 4) ensure that its subcontractor(s), as defined in the Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify Awarding Authorities within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Ordinance in performance of the subcontract.

**PSC-25. Warranty and Responsibility of CONSULTANT/CONTRACTOR**

**CONSULTANT/CONTRACTOR** warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S/CONSULTANT'S** profession, doing the same or similar work under the same or similar circumstances.

**PSC-26. Minority, Women, And Other Business Enterprise Outreach Program**

**CONTRACTOR/CONSULTANT** agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR/CONSULTANT** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR/CONSULTANT** shall not change any of these designated subcontractors/subconsultants, nor shall **CONTRACTOR/CONSULTANT** reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

**PSC-27. Ownership**

Unless otherwise provided for herein, all documents, material, data, and reports originated and prepared by **CONTRACTOR/CONSULTANT** under this contract shall be and remain the property of the **CITY** for its use in any manner it deems appropriate. The provisions of this paragraph shall survive expiration or termination of this Contract.

**PSC-28. Equal Benefits Ordinance.**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Contract is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

(1) During the performance of the Contract, the **CONTRACTOR/CONSULTANT** certifies and represents that the **CONTRACTOR/CONSULTANT** will comply with the EBO. The **CONTRACTOR/CONSULTANT** agrees to post 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/CONSULTANT** will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Office of the City Administrative Officer, Contractor Enforcement Section at (213) 978-7650."

- (2) The failure of the **CONTRACTOR/CONSULTANT** to comply with the EBO will be deemed to be a material breach of the Contract by the Awarding Authority.
- (3) If the **CONTRACTOR/CONSULTANT** fails to comply with the EBO 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 EBO may be used as evidence against the **CONTRACTOR/CONSULTANT** in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

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

**PSC 29 - Slavery Disclosure Ordinance**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time. **CONTRACTOR/CONSULTANT** certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

## Exhibit 1

### INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker.)

**PERSON TO CONTACT** Direct all correspondence, questions, requests for additional forms, etc., to the contact person listed here or to the department that administers your contract, lease or permit:



#### GENERAL INFORMATION

- 1. Project ID** All submissions must identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the types of coverage and dollar amounts specified on the Insurance Requirements Sheet (Form Gen. 146) included in your CITY documents.
- 2. When to submit** Normally, no work or occupancy may begin until a CITY Attorney insurance approval number has been obtained, so documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings but before construction commences.
- 3. Availability of Insurance** Coverages and limits are subject to availability on the open market at reasonable cost as determined by the CITY. For requirements to be relaxed or waived, your broker or agent must document non-availability or non-affordability in a letter to the CITY. It must show a good faith effort to place the required insurance, must list the names of the insurance carriers contacted and show the declinations or cost indications received from each.
- 4. Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed their financial statements.

#### ADMINISTRATIVE REQUIREMENTS

- 5. California Licensee** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.
- 6. Aggregate Limits/Impairment** If any of the required insurance coverages contain annual aggregate limits, you must give the CITY written notice of any pending claim or lawsuit which may diminish the aggregate within thirty (30) days of knowledge of same. You must take steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage

## INSURANCE REQUIREMENTS

required. No substantial reductions in scope of coverage which may affect CITY'S protection are allowed without CITY'S prior written consent.

**7. Signature** All submissions must bear the manual autograph in ink of a person with authority to bind coverage. Signatures which are rubber stamped, mechanically reproduced, initialed by others or photocopied are not acceptable.

### POLICY CONDITIONS

**8. Additional Insured/Loss Payee** The CITY must be included as an additional insured in applicable liability policies to cover the CITY'S vicarious liability for the acts or omissions of the named insured. Such coverage is not expected to respond to the active negligence of the CITY. The CITY is to be named a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

**9. Notice of Cancellation** You agree contractually to maintain all required insurance in full force for the duration of your business with the CITY. By ordinance, all required insurance must provide at least 30 days' prior notice directly to the CITY by receipted delivery (certified mail, courier or in-person delivery) if your insurance company elects to cancel or reduce coverage prior to the policy expiration date. This also applies when the scope of coverage which affects the CITY'S interest is to be reduced or when the dollar limits of coverage are to be reduced for any reason except impairment of an aggregate limit due to prior claims. Submissions not meeting this requirement will be rejected.

**10. Primary Coverage** The coverage must be primary with respect to any insurance or self insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

**11. Separation of Insureds (Severability of Interest)** In construction contracts, the CITY must be able to retain its rights as a potential claimant as well as to be protected as an additional insured for vicarious liability to third party claimants except with respect to the insurance company's limits of liability.

### PROCEDURES

**12. Acceptable Evidence and Approval** CITY Special Endorsement forms completed by your insurance company or its designee are the preferred form of evidence of insurance. (Note: The CITY forms are acceptable to the California Department of Insurance from any insurance carrier. They need not be re-filed by individual insurance companies.) Altered forms may not be accepted but the "Other Provisions" box on the CITY forms, may be used, as necessary, to provide pertinent information such as important exclusions, specific provisions or scheduled locations/equipment. Additional pages may be attached for this purpose, as well. If they are, make note of it in this box. An acceptable alternative to the Special Endorsement form is a certified copy of full insurance policy which contains a 30-day cancellation notice provision and additional-insured or loss-payee status, when appropriate, for the CITY. Binders and Cover Notes are also acceptable as interim evidence for up to 90 days. However, non-binding documents such as broker letters and Certificates of Insurance are not acceptable as stand-alone evidence of coverage. Certificates are acceptable for the following purposes: 1) supplemental information to accompany endorsements; renewals or extensions of coverage already on file with the CITY; 2) for the naming of third-party, additional insureds; 3) as an indication of compliance with statute, such as Workers' Compensation Law or the California Financial Responsibility Law for Automobile

## INSURANCE REQUIREMENTS

Liability, 4) as proof of coverage beyond CITY requirements or which does not directly relate to the CITY'S interests.

**13. Renewal** When an existing policy is timely renewed, submit a renewal endorsement or a manually-signed Certificate of Insurance. However, if your policy number changes or you use a different underwriting company (Insurer) you must submit new evidence which meets the policy conditions listed in Sections 8 through 11 of this information sheet.

### COVERAGE INFORMATION

**14. Dollar Limits** of required insurance are sometimes set by statute or ordinance. When there is no specific amount required by law, limits are based on the amount of risk to the CITY from the contractor, vendor or permittee's activities.

**15. General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third party claims which may arise out of your work or your presence on CITY premises. Contractual liability coverage is a required inclusion in this insurance. (See separate information sheet on the CITY'S SPARTA program as an optional source of low-cost insurance which meets all requirements.)

**16. Automobile Liability** insurance is required only where vehicles are used in performing the work of your Contract or where they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

**17. Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

**18. Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Waiver of Subrogation on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc.

**19. Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. Fire Legal Liability is required for persons occupying a portion of CITY premises.

**20. Surety** coverage may be required to guarantee performance of work. A Fidelity bond may be required to handle CITY funds, high value property and under certain other conditions. Specialty coverages may be needed for certain operations.

**INSURANCE REQUIREMENTS**

Name: \_\_\_\_\_ Date: \_\_\_\_\_, 200\_\_

Agreement/Reference: \_\_\_\_\_  
 Evidence of coverages checked off below which have as a minimum the limits shown must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSL"). Split limits may be substituted if the total per occurrence equals or exceeds the CSL amount.

Limits

  X   Workers' Compensation (Statutory Limit)/Employer's Liability Statutory  
 Waiver of Subrogation in favor of City

General Liability \_\_\_\_\_ \$ \_\_\_\_\_  
 Premises and Operations  Collapse & Underground  
 Contractual Liability  Products/Completed Operations  
 Independent Contractors  Fire Legal Liability  
 \_\_\_\_\_

Automobile Liability (if vehicle is used for this contract, other than commuting to/from work) \$ \_\_\_\_\_  
 Hired Automobiles  Owned Automobiles  
 Non-owned Automobiles  \_\_\_\_\_

  X   Professional Liability (Errors and Omissions) \$ 1 million  
 Discovery Period 12 MONTHS AFTER COMPLETION OF WORK OR FROM DATE OF TERMINATION OF THE AGREEMENT/ CONTRACT.

Property Insurance to cover value of bldg (as determined by city or insurance company)  
 All Risk Coverage  Boiler and Machinery \$ \_\_\_\_\_  
 Extended Coverage  Debris Removal \$ \_\_\_\_\_  
 Flood  \_\_\_\_\_ \$ \_\_\_\_\_  
 Earthquake  \_\_\_\_\_ \$ \_\_\_\_\_

Pollution Liability \$ \_\_\_\_\_  
 \_\_\_\_\_

Fidelity Bond \_\_\_\_\_ Surety Bond \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

Notes: \_\_\_\_\_

**AFFIDAVIT**

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

**Kaye Scholer LLP**

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:  MBE  WBE  OBE

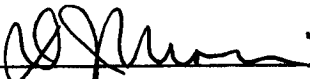
A minority or women enterprise must be owned and controlled by one or more (a) minority in the case of MBEs or, (b) women in the case of WBEs. An OBE is any enterprise that is not a MBE or WBE.

For the purpose of this project, a minority includes:

- (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
- (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

For the purpose of this project, owned and controlled means a business:

- (1) Which is at least 51% owned by one or more minority (MBEs) or one or more women (WBEs) or, in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority (MBEs) or one or more women (WBEs).

Signature   
 Printed Name D. J. Morrison

Title Director of Business Affairs  
 Date Signed February 8, 2007

**NOTARY**

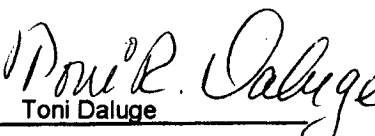
On this 8th day of February 20 07, before me appeared

D. J. Morrison to me personally known, who being duly sworn, did execute the  
Name

foregoing affidavit, and did state that he/she was properly authorized by Kaye Scholer LLP  
Name of Firm

to execute the affidavit and did so act and deed

**SEAL**

Notary Public   
 Commission Expires May 14, 2008



## Contract Description Form

### PRIME CONTRACTOR

Contract #: \_\_\_\_\_ Award Date: \_\_\_\_\_ Contract Term: \_\_\_\_\_  
Contract Title: Agreement for Professional Services Between and Among The City of Los Angeles  
The City of Long Beach and Kaye Scholer LLP  
Business Name: Kaye Scholer LLP Award Total: \$ 500,000  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group (Circle One) MBE WBE OBE  
Address: 901 15th Street, NW  
City/State/Zip: Washington, DC 20005  
Telephone: ( 202 ) 682-3500 FAX: ( 202 ) 682-3580  
Contact Person: Steven S. Rosenthal

### SUBCONTRACTOR

Business Name: Troutman Sanders LLP Award Total: \$ Per monthly billing statements  
Services to be provided: Legal matters regarding Clean Air Action Plan as requested by clients  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group (Circle One) MBE WBE OBE  
Address: 401 - 9th Street, NW; Suite 1000  
City/State/Zip: Washington, DC 20004  
Telephone: ( 202 ) 274-2880 FAX: ( 202 ) 654-5647  
Contact Person: C. Jonathan Benner

### SUBCONTRACTOR

Business Name: \_\_\_\_\_ Award Total: \$ \_\_\_\_\_  
Services to be provided: \_\_\_\_\_  
Owner's Ethnicity: \_\_\_\_\_ Gender \_\_\_\_\_ Group (Circle One) MBE WBE OBE  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_ FAX: ( ) \_\_\_\_\_  
Contact Person: \_\_\_\_\_