

1 AGREEMENT FOR LEGAL SERVICES

2 **31680**

3 THIS AGREEMENT FOR LEGAL SERVICES is made and entered, in
4 duplicate, as of March 8, 2010 for reference purposes only, pursuant to a minute order
5 adopted by the City Council of the City of Long Beach at its meeting on March 2, 2010,
6 by and between DAVIS WRIGHT TREMAINE LLP ("Special Counsel"), and the CITY OF
7 LONG BEACH, a municipal corporation ("City").

8 WHEREAS, the City Attorney has identified a need for the legal services of
9 Special Counsel and Special Counsel is willing and able to perform those services; and

10 WHEREAS, the City and Special Counsel must cooperate to deliver quality
11 legal services in an efficient manner and desire to follow the parameters of this
12 Agreement toward that end;

13 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
14 conditions in this Agreement, the parties agree as follows:

15 1. SCOPE OF SERVICES. Special Counsel shall perform all legal
16 services necessary and appropriate to the Matter for which Special Counsel has been
17 engaged, namely: advise, counsel and represent City regarding ongoing proceedings
18 before the California Public Utilities Commission in connection with implementation of So
19 Cal Gas BCAP and FRAR settlements.

20 2. STAFFING.

21 A. Because the City has engaged Special Counsel due to its
22 expertise and reputation, Special Counsel and the City Attorney will agree on a
23 staffing profile that identifies the partners, associates, and paralegals who are
24 authorized to work on the Matter, including their respective billing rates, which will
25 be attached as Addendum subsequent to execution of this Agreement. Individuals
26 whose names are not included in the staffing profile may not work on the Matter
27 without the prior approval of the City Attorney. The City reserves the right to
28 refuse to pay for work performed by any individual whose name is not listed or

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

1 who has not received such prior approval, or whose rate has not been approved.

2 B. Special Counsel shall not hire or otherwise incur any
3 obligation to pay other counsel, specialists, consultants, or experts for services in
4 connection with the Matter without the prior written approval of the City Attorney.

5 3. FEE. City shall pay to Special Counsel in due course of payments
6 compensation at the hourly rates identified in the staffing profile and reimbursement of
7 costs as further described herein, not to exceed Seventy-Five Thousand Dollars
8 (\$75,000) per annum for the term of this Agreement, subject to appropriation of funds in
9 the second year of the term. Special Counsel shall reduce its annual billing rates shown
10 on the Addendum by five percent (5%).

11 4. BILLING.

12 A. Special Counsel shall keep a record of time spent on the
13 Matter in increments of one tenth (.1) of an hour.

14 B. Each task shall be distinctly and completely identified; the City
15 will not pay invoices which contain block billing. The billing entry must contain the
16 name or initials of the individual performing the task, the nature of the task, the
17 date it was performed, and the length of time it took.

18 C. The City will not pay for the use of attorneys and paralegals to
19 perform Services which are secretarial or administrative.

20 D. The City reserves the right to audit all invoices. The City will
21 not pay for costs incurred by Special Counsel in preparing an invoice, correcting it,
22 or resubmitting it.

23 E. Special Counsel shall submit invoices no later than the last
24 day of the month following the month in which Services were performed and actual
25 costs incurred. If Special Counsel submits invoices after said date, then the
26 invoice(s) may be subject to a discount of ten percent (10%) for each month or
27 portion thereof that the invoice is not timely submitted.

28 5. COSTS. The City will reimburse Special Counsel for the reasonable

1 costs incurred by Special Counsel as a result of its representation of the City in the
2 Matter, in accordance with the Guidelines. Costs shall be actual, without the addition of
3 administrative or overhead charges, and must be documented. The City will not pay for
4 costs that do not contain supporting documentation satisfactory to the City Attorney, or
5 designee.

6 6. TERM. The term of this Agreement shall begin at 12:01 a.m. on
7 February 1, 2010, and shall end at midnight on January 31, 2012 or when the Matter is
8 concluded or on fifteen (15) days' prior notice from the City to Special Counsel.

9 7. INSURANCE. As a condition precedent to the effectiveness of this
10 Agreement, Special Counsel shall procure and maintain at its expense for the duration of
11 this Agreement from insurance companies admitted to write insurance in California or
12 from authorized non-admitted insurance companies that have ratings of or equivalent to
13 A.VIII by A.M. Best Company professional liability or errors and omissions liability
14 insurance in an amount not less than One Million Dollars (\$1,000,000) per claim.

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

25 Special Counsel shall deliver to the City certificates of insurance and
26 original endorsements for approval as to sufficiency and form prior to the start of
27 performance hereunder. The certificate and endorsements for each insurance policy
28 shall contain the original signature of a person authorized by that insurer to bind

1 coverage on its behalf. The procuring or existence of insurance shall not be deemed or
2 construed as a limitation on Special Counsel's liability or as performance of or
3 compliance with any indemnity provisions herein. City reserves the right to require
4 complete certified copies of all policies at any time. Special Counsel shall make available
5 to the City all books, records, and other information relating to the insurance required
6 herein during normal business hours. Any modification or waiver of the insurance
7 requirements herein shall only be made with the approval of the City Risk Manager or
8 designee. In addition, Special Counsel shall, at least thirty (30) days prior to expiration of
9 the insurance required hereunder, furnish to the City certificates of insurance and
10 endorsements evidencing renewal of such insurance.

11 8. CONFLICT OF INTEREST. Special Counsel, by executing this
12 Agreement, certifies that, at the time Special Counsel executes this Agreement and for
13 the duration of this Agreement, Special Counsel does not have and will not perform
14 services for any other client which would create a conflict as between the interests of the
15 City hereunder and the interests of such other client, subject to written waiver by the City.

16 9. NONDISCRIMINATION. In connection with performance of Services
17 and subject to applicable rules and regulations, Special Counsel shall not discriminate on
18 the basis of race, religion, national origin, color, age, sex, sexual orientation, gender
19 identity, AIDS, HIV status, handicap or disability. It is the policy of the City to encourage
20 the participation of Minority Business Enterprises and Women-owned business
21 Enterprises and the City urges Special Counsel to do likewise.

22 10. MISCELLANEOUS.

23 A. This Agreement shall not be amended, nor any provision or
24 breach hereof waived except in writing signed by the parties which refers to this
25 Agreement.

26 B. This Agreement shall be governed by and construed pursuant
27 to the laws of the State of California. Special Counsel shall comply with all laws,
28 ordinances, rules, and regulations covering performance of Services.

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C. This Agreement, including the Guidelines and exhibits, if any, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the Services and the Matter.

D. If there is any inconsistency or ambiguity between this Agreement, the Guidelines, or the Addendum, this Agreement shall control.

E. If there is any legal proceeding between the parties to enforce or interpret this Agreement 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 and court costs (including appeals).

F. The acceptance of Services or payment of money by the City shall not operate as a waiver of any provision of this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

G. This Agreement is intended by the parties to benefit themselves only and is not in any way intended or entered for the purpose of creating any benefit or right for any person or entity that is not a party to this Agreement.

11. NOTICE. Notice shall be in writing and personally delivered or deposited in the U.S. Mail, first class, postage prepaid to Special Counsel at Davis Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533, Attn.: Edward W. O'Neill, and to the City at 333 West Ocean Boulevard, 11th Floor, Long Beach, California 90802, Attn.: City Attorney. Notice may be given by fax to the City Attorney at (562) 436-1579 and to Special Counsel at (415) 276-6599, provided that duplicate notice is simultaneously delivered or mailed. Notice shall be deemed given on the date of personal delivery or forty-eight (48) hours after deposit in the mail. Notice of change of address shall be given as described herein for other notices.

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

3 DAVIS WRIGHT TREMAINE LLP

4 JUNE 15, 2010

By: Edward W. O'Neil

5 Title: PARTNER

6 "Special Counsel"

7
8 CITY OF LONG BEACH, a municipal
9 corporation

10 7.4, 2010

11 By [Signature]
12 **EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**
City Manager

13 "City" Assistant City Manager

14 This Agreement is approved as to form on 6-25, 2010.

15 ROBERT E. SHANNON, City Attorney

16 By [Signature]
17 Deputy

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