

AGREEMENT FOR BOND AND DISCLOSURE COUNSEL SERVICES

This Agreement is entered into this 6th day of October, 2020, by and between THE CITY OF MANHATTAN BEACH, a California municipal corporation ("CITY"), and STRADLING YOCCA CARLSON & RAUTH, A PROFESSIONAL CORPORATION ("COUNSEL").

RECITALS

1. CITY desires to utilize COUNSEL to provide legal services as bond counsel and/or disclosure counsel relating to the issuance of bonds or other debt obligations for various purposes ("BONDS").

2. COUNSEL desires to provide these legal services in accordance with the terms and conditions hereinafter set forth.

3. COUNSEL represents to CITY that it has licenses, capital, and experience necessary to qualify to serve as bond and disclosure counsel for any such financing.

NOW, THEREFORE, in consideration of the mutual promises made between the parties, and other consideration, the receipt of which is hereby acknowledged, CITY hereby engages the services of the COUNSEL, and COUNSEL agrees to perform the following services.

1. **SCOPE OF SERVICES.** COUNSEL shall perform legal services as described in the Scope of Services attached to this Agreement as Exhibit A and incorporated by reference. In addition, at the request of the CITY, COUNSEL shall undertake such other services (not listed in Exhibit A). Prior to undertaking any such additional services, the CITY and COUNSEL shall establish the compensation to be paid for such services.

2. **TERM.** This Agreement shall be effective as of the date first set forth above. Unless earlier terminated in accordance with paragraph 7 of this Agreement, this Agreement shall terminate upon the first to occur of (a) June 30, 2025 or (b) COUNSEL'S completion and CITY's acceptance of all work specified in this Agreement and authorized by a Notice to Proceed.

3. **PROFESSIONAL STANDARDS.** COUNSEL shall maintain or exceed the level of competency presently maintained by other practicing bond and disclosure counsel in the State of California, for the professional technical soundness, accuracy and adequacy of all work, advice, and materials furnished under this Agreement.

4. **TIME OF PERFORMANCE.** COUNSEL shall commence performance upon receipt of a Notice to Proceed from CITY and shall complete performance in a timely manner as directed by CITY. COUNSEL shall deliver final transcripts to CITY no later than forty-five (45) days from the date of closing. However, CITY in its sole discretion may extend the time for performance of any service.

5. **OUTSIDE COUNSEL.** COUNSEL may, at COUNSEL's sole cost and expense, employ such other person as may, in the opinion of COUNSEL, be needed to comply with the terms of this Agreement, if such persons possess the necessary qualifications to perform such services. The engagement of such persons shall be subject to the prior approval of CITY's Finance Director.

6. **COMPENSATION.** COUNSEL shall be compensated for its work as bond and disclosure counsel as set forth on Exhibit B.

7. **KEY EMPLOYEE.** COUNSEL agrees that KEVIN CIVALE shall be the lead attorney ("Lead Attorney") responsible for all services provided to CITY pursuant to this Agreement. COUNSEL shall not change the Lead Attorney without prior written approval from CITY's Finance Director.

8. **TERMINATION OF AGREEMENT.** CITY may terminate this Agreement at any time: (i) with cause upon giving notice to COUNSEL, and (ii) without cause by giving COUNSEL fifteen (15) days prior written notice of its intent to terminate. In the event the Agreement is so terminated by CITY, COUNSEL shall receive no damages. Upon receipt of a termination notice, COUNSEL shall (1) promptly discontinue all services affected (unless the notice directs otherwise); and (2) promptly deliver all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by COUNSEL in performing the Agreement to CITY, whether completed or in progress.

9. **INSURANCE.** COUNSEL shall not commence work under this Agreement until it has obtained all insurance required hereunder issued by a company or companies acceptable to CITY nor shall COUNSEL allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Policies shall provide that they shall not be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY by certified mail. COUNSEL shall furnish CITY with copies of all such policies or certificates promptly upon receipt. COUNSEL shall take out and maintain at all times during term of this Agreement the following policies of insurance:

9.1 **Workers' Compensation Insurance.** Before beginning work, full workers' compensation insurance, or other proof that COUNSEL has adequate self-insurance, covering all persons whom it may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California.

9.2 **Certification of Workers' Compensation Coverage.** In accordance with the provision of the California Labor Code, section 3700, every employer shall secure the payment of compensation to his employees. COUNSEL prior to commencing work, shall sign and file with CITY certification as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code and I will comply with such provision before commencing the performance of the work of this agreement."

9.3 **Professional Errors and Omissions.** Throughout the term of this Agreement, at COUNSEL's sole cost and expense, COUNSEL shall provide Professional Liability insurance with minimum limits of two million dollars (\$2,000,000) per claim and aggregate. This policy shall be issued by an insurance company which is qualified to do business in the State of California and contain a clause that the policy may not be canceled until thirty (30) days written notice of cancellation is mailed to CITY.

9.4 Commercial General Liability. Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00.

9.5 Additional Insurance. COUNSEL may obtain for its own account insurance not required under this Agreement.

10. COMPLIANCE WITH LAW. COUNSEL will at all times during the course of this Agreement, comply with all laws, ordinances, regulations and rules of the federal, state and local governments including, without limitation, any rules promulgated by the Municipal Securities Rulemaking Board.

11. INDEMNIFICATION. To the fullest extent permitted by law, COUNSEL shall indemnify the City and its elected officials, officers, and employees (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Liabilities"), in law or equity, which have been finally determined by a court of applicable jurisdiction to arise out of the negligent acts or negligent omissions of COUNSEL in the performance of this Agreement, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees.

12. INDEPENDENT CONTRACTOR. The parties, in the performance of this Agreement shall be acting as independent contractors and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the agents or employees of the other party, except as specifically agreed herein.

13. ATTORNEYS' FEES. In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the right of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover actual attorneys' fees and court cost from the opposing party.

14. ASSIGNMENT. Neither this Agreement nor any duties or obligations hereunder shall be assigned by COUNSEL without prior written consent of CITY.

15. ENTIRE AGREEMENT. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations, by any party which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the interpretation or construction of this Agreement are to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

16. NONDISCRIMINATION PROVISION. COUNSEL, with regard to the work performed by it during the term of the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement materials and leases of equipment.

17. **GOVERNING LAW.** This Agreement shall be construed pursuant to the laws of the State of California.

18. **MODIFICATION.** CITY or COUNSEL may, from time to time during the course of this Agreement, request modifications of or changes in the Statement of Work to be performed hereunder. Such changes or modifications are mutually agreed upon in writing by and between CITY and the COUNSEL, shall be incorporated in a written amendment to this Agreement and shall be effective only upon execution of the amendment.

19. **OWNERSHIP OF MATERIAL AND DOCUMENTS.** All documents, studies, models, and reports prepared by COUNSEL under this Agreement shall be considered works for hire for copyright purposes and the sole property of CITY.

20. **NOTICE.** Any notice to be given to COUNSEL shall be deemed duly and properly given upon delivery, if sent to COUNSEL, postage-prepaid to:

Stradling Yocca Carlson & Rauth
500 Capitol Mall, Suite 1120
Sacramento, CA 95814

Attn: Kevin Civale

or personally delivered to COUNSEL at such address or other specified to CITY in writing by COUNSEL.

Any notice to be given to CITY shall be deemed duly and properly given upon delivery, if sent to CITY postage-prepaid to:

Finance Director
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

or personally delivered to CITY at such address or other address specified to COUNSEL in writing by the CITY.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

CITY:

City of Manhattan Beach,
a California municipal corporation

CONSULTANT:

Stradling, Yocca, Carlson & Rauth,
a Professional Corporation

DocuSigned by:
By: Bruce Moe 10/9/2020
Name: Bruce Moe
Title: City Manager

By: Kevin Civalo
Name: Kevin Civalo
Title: Shareholder

ATTEST:

By: _____
Name: _____
Title: _____

DocuSigned by:
By: Liza Tamura 10/9/2020
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: City Attorney, Quinn Barrow 9/28/2020
Name: Quinn M. Barrow
Title: City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:
By: Steve S. Charelian 9/28/2020
Name: Steve S. Charelian
Title: Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:
By: Steve S. Charelian 9/28/2020
Name: Steve S. Charelian
Title: Finance Director

EXHIBIT A

SCOPE OF SERVICES

Perform all customary duties performed by Bond Counsel and Disclosure Counsel.

Specific project review, participation in negotiation and drafting of legal agreements (including credit enhancement documents), preparation of the official statement and all other necessary marketing documents and other documents supporting the transaction (e.g., lease agreements for lease backs et al.). Advise and consult with City representatives; participate at finance team meetings, assist with reviews by the rating agencies; issuance of unqualified approving opinions and tax opinions.

Appear at and make presentations to the City's Finance Committee and City Council with regard to each issuance.

Undertake any necessary research into legal matters, including tax matters relative to issuing documents, opinions and obligations.

Seek, on behalf of the City, any necessary opinions, letter rulings or other documentation from the Internal Revenue Service or other bodies.

Provide legal advice after the close of a particular financing on issues that may arise in connection with the transaction.

Provide advice and assistance to the City as requested in connection with continuing disclosure.

EXHIBIT B

FEES FOR SERVICE

For each issue of bonds, to the extent that bonds are successfully issued, the fee and expenses due to COUNSEL will be paid from proceeds of the sale of the Bonds, based on the following schedule, after COUNSEL's submission of an invoice (which is determined by the City's Finance Director to be acceptable):

Bond Counsel

General Lease Financings (General, CIP, Parking Funds)	\$50,000 inclusive of expenses
Assessment District Financings	\$50,000 per district (incl. expenses)
	\$10,000 per additional district in same financing

Disclosure Counsel

General Leases and Assessments (above)	\$30,000 per financing including all expenses
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If after the proceedings for a bond issue (a "Transaction") has commenced, the City notifies COUNSEL in writing that the City has determined to terminate the Transaction proceedings and not issue such bonds, or the Agreement is terminated pursuant to Section 8 before the issuance of such bonds, then COUNSEL may submit its invoice to the City's Finance Director within 30 days after receiving the City's notice of such termination (of the Transaction proceedings or the Agreement, as applicable). hours worked, at the rate of \$500.00 per hour), and the actual out-of-pocket expenses incurred by COUNSEL, for the Transaction; provided that the aggregate of the fee and expenses due under such invoice shall in no event exceed the amount otherwise payable for such Transaction if the bonds had been issued. Upon receipt, the City's Finance Director shall make a determination on whether the invoice is acceptable based on the work performed to the City's satisfaction and the expenses incurred, and may request COUNSEL to submit a revised invoice based on such determination. Once the Finance Director determines that the invoice is acceptable, the City will make payment within 30 days.