



AGENDA REPORT

Meeting Date: October 20, 2015
Item Number: E-9
To: Honorable Mayor & City Council
From: Noel Marquis, Assistant Director of Administrative Services/ Finance
Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND JONES HALL, A PROFESSIONAL LAW CORPORATION FOR SPECIAL COUNSEL SERVICES FOR THE ISSUANCE OF BONDS

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends that the City Council approve the agreement for special counsel services for the issuance of bonds with Jones Hall, A Professional Law Corporation.

INTRODUCTION

The City has contracted with Jones Hall, A Professional Law Corporation in the past to provide bond counsel and disclosure counsel services for the issuance of bonds. The City currently anticipates the need to issue one or several debt instruments for the projects being reviewed by the Mayor's Finance Task Force.

DISCUSSION

The selection of bond counsel allows the City to assemble the financing team that make recommendations to the City Council on the most beneficial approach for the City to take in its various financing needs.

FISCAL IMPACT

This recommendation is for a one year agreement with Jones Hall, A Professional Law Corporation, with two one year options to renew, for special counsel services for the issuance of bonds related to capital projects that may be identified by the Mayor's Finance Task Force and subsequently approved by the City Council. Should bonds be issued, payment for disclosure counsel services shall be at a flat fee of \$40,000 and

bond counsel services shall be based on a percentage of the principal amount of the bonds as shown in Exhibit A of the attached agreement. For example, a \$20 million bond issuance would generate a fee of \$81,250. These fees and expenses shall be entirely contingent upon the delivery of the bonds, and shall be payable solely from the proceeds of the bonds and from no other funds of the City.


Noel Marquis

Finance Approval

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND JONES HALL, A PROFESSIONAL LAW
CORPORATION FOR SPECIAL COUNSEL SERVICES FOR
THE ISSUANCE OF BONDS

This Agreement is entered into in the City of Beverly Hills, between the City of Beverly Hills, a Municipal Corporation (hereinafter "City") and Jones Hall, a Professional Law Corporation (hereinafter "Attorney").

A. The City intends to issue one or more series of bonds, certificates of participation or other indebtedness (the "Bonds") for the purpose of financing and refinancing capital improvements of the City.

B. The Attorney has represented that it is specially trained and experienced to provide bond counsel and disclosure counsel services for the issuance of the Bonds and the Attorney is willing to provide such services.

Section 1.

I. Attorney's Responsibilities. Attorney shall provide legal services in connection with the issuance of each series of the Bonds, which shall include the following:

a. Confer and consult with the City's officers, administrative staff and consultants on matters relating to the issuance of the Bonds.

b. Attend meetings of the City, including City Council meetings and any administrative meetings at which the Bonds are to be discussed and deemed necessary by the Attorney for the proper planning of the proceedings for issuing the Bonds or when specifically requested by the City to attend.

c. Prepare any required resolutions, ordinances, notices, instructions and other legal documents necessary for the issuance of the Bonds.

d. Review legal issues relating to the structure of the Bonds.

e. Subject to the completion of the proceedings for issuing the Bonds to the satisfaction of the Attorney, provide the opinion of the Attorney (the "Bond Opinion")

regarding the validity and binding effect of the Bonds, the source of payment and security for the Bonds, and the excludability of interest on the Bonds from gross income for federal and California state income tax purposes.

f. Prepare and coordinate the delivery of the Bonds upon payment therefore (the "Closing") including all required certificates, opinions, statements, forms and documents required to evidence the issuance of the Bonds and permit the issuance of the Bond Opinion.

g. Prepare and provide a complete transcript of the documentation necessary to accompany each issuance of the Bonds.

h. Attend all meetings of the City and any administrative meetings at which the Official Statement is to be discussed, deemed necessary by Attorney for the proper exercise of their due diligence with respect to the Official Statement, or when specifically requested by the City to attend.

i. In connection with the sale of the Bonds: (i) prepare and review, without undertaking an independent investigation, an official statement or other disclosure document for the Bonds; (ii) draft or prepare the continuing disclosure certificate or undertaking of the City; (iii) prepare and review official notice of sale documents and arrange for publication of such documents for the Bonds, if the Bonds will be sold through a competitive sale; and (iv) prepare and review a bond purchase agreement to be entered into between the City and an underwriter, if the Bonds will be sold through a negotiated sale.

j. Subject to the completion of the proceedings for issuing the Bonds to the satisfaction of Attorney, provide a letter of Attorney addressed to the underwriter and the City that, although Attorney have not undertaken to determine independently or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement, in the course of Attorney participation in the preparation of the Official Statement, Attorney has been in contact with representatives of the City and others, concerning the contents of the Official Statement and related matters and based upon the foregoing, nothing

has come to Attorney's attention to lead Attorney to believe that the Official Statement (except for any financial or statistical data or forecasts, numbers, charts, estimates, assumptions or expressions of opinion included therein, information relating to The Depository Trust Company and its book-entry system, and information relating to a bond insurer or credit enhancer, if any, as to which Attorney need express no view) as of the date of the Official Statement and the date of the closing contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

II. Exceptions to Attorney's Services. The following services are outside of the scope of this Agreement and if requested by the City shall be subject to a separate written agreement by the parties.

a. Any services rendered in any litigation, including any validation proceedings deemed necessary by Attorneys, relating to the Bonds.

b. Advice and preparation of documentation regarding compliance with Section 148 of the Internal Revenue Code of 1986, relating to arbitrage limitations and rebate provisions.

c. Advice and services to arise after the Closing for all applicable federal securities law and continuing disclosure.

d. The preparation of proceedings regarding increases in or adjustments to the City's utility rate structures.

e. Any advice of a substantial nature regarding the servicing of the Bonds.

Section 2. Consideration. For Attorney's services performed pursuant to this Agreement, City shall pay Attorney the amounts described in Exhibit A.

Section 3. Term. This Agreement shall govern services rendered until terminated.

Section 4. Indemnification. Attorney shall indemnify, defend, and hold harmless City, City Council, its officers, agents, and employees, from any and all claims or losses resulting from physical injury or damage to tangible property arising from the wrongful or negligent action or inaction of Attorney or any person employed by Attorney in the performance of this Agreement.

Section 5. Insurance.

a. Attorney shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by Attorney, its agents, representatives or employees. Insurance shall be of the type, in the amounts and subject to the provisions described below.

i. Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage (“occurrence” form CG0001, Ed. 11/88) with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

ii. Workers Compensation insurance as required by the State of California.

iii. Professional Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000).

b. Evidence of Coverage:

i. Within 14 days after approval of this Agreement by the City, Attorney shall file with the City certificates of insurance with original endorsements evidencing coverage in compliance with this Agreement on the City’s standard proof of insurance form, attached hereto as Exhibit B, or on a similar form acceptable to the City Attorney. Except as

required by law, the City shall not disclose the information contained on such certificates of insurance.

ii. Attorney shall make the insurance policies required by this Agreement, including all endorsements and riders, available to the City for inspection at Attorney's office during regular business hours.

iii. During the term of this Agreement, Attorney shall maintain with City current valid proof of insurance coverage. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on the City's standard proof of insurance form, as described in paragraph (b)i of this section.

iv. Failure to submit any required evidence of insurance within the required time period shall be cause for termination.

v. In the event Attorney does not maintain current, valid, evidence of insurance on file with City, City may, at its option, withhold payment of any moneys owed to Attorney, or which it subsequently owes to Attorney, until proper proof is filed.

c. All insurance coverage shall be provided by insurers admitted in the state of California and with a rating of B+;VII or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.

d. Attorney shall not modify any policy required by this Section in a manner that materially and adversely affects coverage to the City as an additional insured. Each insurance policy shall be endorsed to state that coverage shall not be canceled except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

e. Attorney's insurance and any insurance provided in compliance with this Agreement shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.

f. Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City.

g. Any deductibles or self-insured retentions shall be declared to and are subject to approval by City. At the option of the City, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects the City, or Attorney shall procure a bond guaranteeing payment of losses and expenses.

h. In the event that Attorney does not provide continuous insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at Attorney's expense, and the City may deduct all such costs from moneys the City owes to Attorney or from moneys which it subsequently owes to Attorney.

i. All commercial general liability insurance coverage required to be maintained pursuant to this Agreement by Attorney shall name the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this Agreement.

Section 6. Successors and Assigns. This Agreement may not be assigned by Attorney.

Section 7. Facilities and Equipment. Attorney shall, at its own cost and expense, provide all facilities and equipment which may be required for performance of services required by this Agreement.

Section 8. Termination. This Agreement may be terminated by City, without prior notice, at any time. Attorney shall be entitled to the compensation earned by Attorney prior to the date of termination. Attorney shall be entitled to no further compensation after the date of termination. Attorney reserves the right to terminate this Agreement upon completion of the services set forth in Section 1, or in the event that City fails to timely pay for Attorney's services after Attorney provides City reasonable notice and opportunity to cure such failure, or for any other reason permitted or required under Rule 3-700 of the Rules of Professional Conduct.

Section 9. Notice. Whenever it shall be necessary for either party to serve notice on the other respecting this Agreement, such notice shall be served personally or by

certified mail addressed to the City Attorney of the City of Beverly Hills, 455 N. Rexford Drive, Suite 230, Beverly Hills, California, 90210-4817; or to Jones Hall a Professional Law Corporation, 475 Sansome Street, Suite 1700, San Francisco, California 94111, unless and until different addresses may be furnished in writing by either party to the other, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

Section 10. Extent of Agreement. This Agreement represents the entire and integrated Agreement between City and Attorney and supersedes any and all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both City and Attorney.

Section 11. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 12. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California.

Executed on this _____ day of _____, 20___ at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

JONES HALL, A PROFESSIONAL LAW
CORPORATION



SCOTT R. FERGUSON
Vice President



DAVID FAMA
Secretary

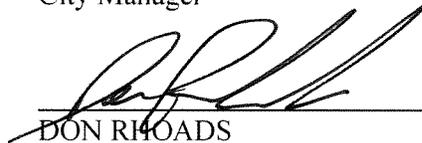
APPROVED AS TO FORM:



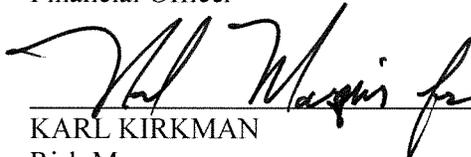
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager



DON RIHOADS
Director of Administrative Services/Chief
Financial Officer



KARL KIRKMAN
Risk Manager

EXHIBIT A
COMPENSATION

For the Attorney services performed pursuant to this Agreement, City shall pay Attorney as follows:

- a. For each series of Bonds:
 - i. 2% of the principal amount of the Bonds to a principal amount of \$1,250,000 (with a minimum fee of \$25,000 in the event of issuance of a principal amount of less than \$1,250,000); plus
 - ii. 0.5% of the principal amount of the Bonds in excess of \$1,250,000, but less than or equal to \$5,000,000; plus
 - iii. 0.25% of the principal amount of the Bonds in excess of \$5,000,000, but less than or equal to \$10,000,000; plus
 - iv. 0.125% of the principal amount of the Bonds in excess of \$10,000,000.
- b. For the Disclosure Counsel services under Attorney's Responsibilities in Section 1 I (h) through (j), the flat fee of \$40,000.
- c. In addition, Attorney shall be reimbursed for any reasonable costs advanced by Attorney on behalf of the City, including shipping, delivery and courier service, photocopying, official transcript duplication and travel expenses for travel outside of California (if any and if approved in advanced by City in writing), but specifically *excluding* travel expense within the state of California. City and Attorney agree that Attorney shall be reimbursed no more than fifty cents (50¢) per page for facsimiles, with a maximum charge of Forty-Five Dollars (\$45.00) for any individual facsimile transmission, and no more than ten cents (10¢) per page for photocopies. Any expense over \$250 shall include the appropriate back-up documentation for that expense (i.e. invoice, receipt, etc.). In no case shall any reimbursement for each Bond issuance exceed \$2,500.
- d. Payment of the above fees and expenses shall be entirely contingent, shall be due and payable upon the delivery of the Bonds and shall be payable solely from the proceeds of the Bonds and from no other funds of the City. Payments shall be made upon the date of the Closing, but no later than thirty (30) days thereafter.



EXHIBIT B

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	LIMITS		AGGREGATE
				B.I.	P.D.	
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days'** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____
ADDRESS _____
: _____

RM02.DOC REVISED 10/14/96.