

**LEGAL SERVICES AGREEMENT
BETWEEN
THE CITY OF RICHMOND, CALIFORNIA (“CLIENT”) & KELLER ROHRBACK
L.L.P. AND R. BRADLEY MILLER (“ATTORNEYS”)
REGARDING RICHMOND SWAPS**

1. IDENTIFICATION OF PARTIES. This Agreement is made between Keller Rohrback L.L.P. (“Keller”) and R. Bradley Miller (“Miller”) and the City of Richmond, California (hereafter referred to as “Client”). Keller and Miller are hereafter referred to as “Attorneys”.

This Agreement is required by California Business and Professions Code section 6147 and is intended to fulfill the requirements of that section.

2. RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEY. Client is retaining R. Bradley Miller and the law firm of Keller Rohrback L.L.P. (“KRLLP”). The retention of KRLLP is of the firm and not any particular attorney, and attorney services to be provided to Client by KRLLP will not necessarily be performed by any particular attorney.

3. AUTHORIZED REPRESENTATIVE OF CLIENT. Client designates the City Attorney as the authorized representative to direct Attorneys and to be the primary individual to communicate with Attorneys regarding the subject matter of Attorneys’ representation of Client under this Agreement. This designation is intended to establish a clear line of authority between Client and Attorneys but not to preclude communication between Attorneys and other representatives of Client.

4. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by Attorneys to Client are as follows: Representation of Client with respect to the following matters (collectively, the “Swaps Action”):

a. Evaluation of potential claims related to the City’s numerous interest rate swap transactions and swaptions entered into from 2006 to the date hereof (“Swaps”), including any termination payments which have been made.

b. Claims and/or actions against financial advisors, swap advisors, attorneys, swap providers and others, as appropriate, seeking equitable and/or legal relief, including but not limited to damages sustained by Client as a result of the Swaps, including all appeals related thereto (such claims or actions are referred to as the “Swap Action”).

5. LEGAL SERVICES SPECIFICALLY EXCLUDED. It is the intent of the parties that Attorneys will represent Client in a civil action or actions seeking equitable and legal relief related to its Swaps in the appropriate court or courts of the State of California or appropriate state and/or the United States District Court, as well as in any proceeding by writ or appeal related to that action until a final non-appealable judgment or settlement. Attorneys will prepare one or more draft complaints asserting Swaps-related claims and provide such drafts to Client for review. No Swaps Action will be commenced without the prior consent of both Attorneys and Client. Legal services that are not to be provided by Attorneys under this Agreement specifically include, but are not limited to, the following:

a. Proceedings before any state or federal administrative or governmental

agency, department, or board, other than as necessary with respect to the work herein. However, with Client's permission Attorneys may elect to appear at administrative proceedings to protect Client's rights in this litigation, without Client being assessed any additional attorneys' fee in connection with such appearance.

b. Defending any legal action(s) against Client or its employees commenced by any person, with the exception of any cross complaints or counter claims filed in the Swaps Actions described in Paragraph 4. This exception would not include any legal action filed against Client or Client's employees arising out of the Swaps Action.

c. Any action with respect to any dispute arising under or concerning this Agreement.

If Client wishes to retain Attorneys to provide any legal services for matters excluded from this Agreement, a separate written agreement between Attorneys and Client may be required which may require compensation to Attorneys in addition to that set forth in Paragraph 8. Alternatively, Client would always have the option to engage other counsel to provide such legal services.

6. RESPONSIBILITIES OF ATTORNEYS AND CLIENT. Attorneys will perform the legal services called for under this Agreement, keep Client informed of material progress and developments, and respond to Client's inquiries and communications.

Attorneys will work at all times under the direction and control of the City Attorney, which shall have the power to control and supervise the litigation. As the Client's chief legal officer, and subject to the review and approval by the Governing Body, City Attorney shall retain direct control over all aspects of the Swaps Action, including specifically (but not limited to) the following:

- decisions regarding settlement and resolution of the case and major strategic decisions are reserved exclusively to the discretion of Governing Body;
- City Attorney and Client will retain complete control over the course and conduct of the Swaps Actions;
- Attorneys from the City Attorney's Office with supervisory authority shall be personally involved in overseeing the litigation at all times.

Client will be truthful and cooperative with Attorneys and keep Attorneys informed of developments. Attorneys will present status reports to Client as events reasonably warrant or at the reasonable request of Client. Attorneys and Client mutually acknowledge that Attorneys need to be informed about Client's plans and anticipated decisions that may materially affect the Swaps Action. Accordingly, Attorneys and Client will work to assure that each keeps the other fully and timely informed about matters that affect the other and Attorneys shall consult in advance with and obtain the prior approval of the City Attorney concerning all substantive aspects of the Swaps Action. Additionally, Attorneys shall not make or distribute any press releases without the express permission and consent of the City Attorney.

7. CLIENT RETENTION OF DOCUMENTS. Client acknowledges its responsibility to undertake all necessary effort to identify, preserve, and retain documents concerning potential claims or defenses related to the Swaps Action. Additionally, Client will suspend all document destruction policies and implement a litigation hold as necessary to ensure

the preservation of relevant documents as advised by Attorneys. This litigation hold applies to hard-copy documents; electronically stored data, including backup tapes, legacy systems, and metadata; calendars and planners; and data from text messaging, blogs and social networking sites. This includes preserving all relevant data, regardless of whether it is contained on business or personal computers, personal digital assistants, cell phones etc. The documents need to be preserved in the form in which they currently exist. Client shall cooperate with Attorneys in locating, preserving, and reproducing its records which may be material to the investigation, discovery, prosecution, and trial in the Swaps Action. Client shall designate a lead staff member to coordinate discovery and other document requests related to the Swaps Action in a timely manner and Client shall assist in providing access to Attorneys such current or former staff members as may be witnesses or knowledgeable of matters related to the Swaps action.

8. ATTORNEYS' FEES. The compensation that Attorneys will receive for the legal services to be provided under this Agreement will consist of a contingent fee equal to 25% of any "Recovery."

a. "Recovery" means the sum of any "Cash Recovery" (as defined herein) without reduction or adjustment for "Costs" (as defined in Paragraph 10 of this Agreement). For purposes of this Agreement, "Judgment" refers to any final (including conclusion of any appeals) contested court order or judgment or contested arbitration award; "Settlement" refers to Recoveries obtained pursuant to any voluntary agreement, whether by settlement, mediation, or court stipulation.

b. "Cash Recovery" means, without limitation, the total monetary amount received (whether by Judgment or Settlement) as a result of the Swaps Action, including any fee or Cost award described in subparagraph e below. This definition specifically includes attorneys' fees.

"Partial Cash Recovery" means any Cash Recovery obtained prior to the complete resolution of the Swaps Actions and where there are multiple defendants, may mean settlements or judgments against some defendants but not all. Such recovery shall be used first to pay unreimbursed Costs advanced up to the date of such Partial Cash Recovery. Unless Attorneys and Client agree otherwise in writing, any remaining Partial Cash Recovery received prior to the final resolution of the Swaps Action shall be placed in a trust account administered by Keller for the benefit of Client. With approval of Client, the funds in this trust account may be drawn upon to pay for any future Costs incurred in the Swaps Action.

c. Should Recovery following a Judgment provide for payment in the future (which may consist of one or several payments over a period of time), Attorneys shall be paid the applicable percentage from each payment when received.

d. Attorneys shall keep an accounting of (i) all attorney fees incurred in the Swaps Action, (ii) all costs incurred, (iii) all funds in the trust account administered by Attorneys, and (iv) other matters and shall provide periodic reports on same to Client upon request (see Section 10(e)).

e. Client may obtain by award or negotiated settlement attorneys' fees and/or Costs in the Swaps Action. For example, certain claims may arise under statutes that provide for an award of attorneys' fees. Attorneys agree that if such an award is allowed for under the law then it will endeavor to pursue such an award from the Court on behalf of Client and defend Client against any claims that it owes defendants' attorney fees.

f. Client understands that the attorneys' fee set forth in this Agreement is not set by

law but rather has been negotiated between Attorneys and Client.

g. If no recovery is obtained, Client shall not be obligated to pay any of the Attorneys fees or Costs.

9. DIVISION OF ATTORNEYS' FEES / CO-COUNSEL.

Attorneys' fees payable hereunder shall be divided between Miller and Keller based on the value of the amount of time each has devoted to this representation. In addition, Attorneys may decide to retain another attorney or law firm as associate counsel. Client agrees that Attorneys may associate other attorneys to assist in the representation. Client's legal fees under this agreement will not increase by reason of this association. A decision by Attorneys to retain associate counsel shall be subject to Client's approval, which shall not be unreasonably withheld. In the event of any dispute between Keller and Miller, they may submit it to Client for resolution. Client shall not be a party to such dispute between Keller and Miller and its reasonable fees and costs shall be reimbursed.

10. COSTS.

a. Attorneys to advance costs. Attorneys will advance the Costs (as defined in this paragraph 10) incurred in connection with Attorneys' representation of Client under this Agreement. Those Costs, if authorized, are reimbursable out of the Cash Recovery.

b. Authorized costs. The Client authorizes Attorneys to incur reasonable Costs and to retain consultants or expert witnesses reasonably necessary in Attorneys' judgment. Such Costs include, but are not limited to, court filing fees, deposition costs, expert, consultant, and investigator fees and expenses, investigation costs, electronic document hosting costs transportation, meals and lodging for out of town travel, messenger service fees, photocopying expenses, and process server fees. Costs shall not include full or part-time employees (e.g. paralegals and law clerks). Instead, Costs shall be specific and confined to representation of Client. Costs shall be accounted for as they are incurred by Attorney. There shall be no mark-up attached. With respect to electronic document hosting, Keller will provide such services through its Legal Technology Group, on the terms set forth on Attachment 1; all fees related thereto shall constitute Costs to be advanced by Attorneys and reimbursed as set forth in this Section 10. As such, Attorneys and Client are jointly incentivized to keep Costs to a minimum. Items that are not to be considered Costs, and that must be paid by Client without being either advanced or contributed to by Attorneys, include, but are not limited to, (i) Client's expenses incurred in providing information to third parties, (ii) Client's internal expenses in support of the litigation, and (iii) damages to third parties not caused in any manner by actions of Attorneys, that Client is ultimately required to pay.

Regarding expert consultant and investigator costs, Attorneys and Client shall meet and confer regarding selection and retention of expert consultants and investigator in the Swaps Action and Client shall be informed of the persons chosen and their charges. Client shall not unreasonably withhold approval of selection and retention of such experts.

c. In the event of Recovery for Client, Client will reimburse Costs. In the event Client obtains Recovery (whether by settlement, arbitration, Judgment or otherwise) and pursuant to Paragraph 16 (Conclusion of Services), Client shall pay Costs within sixty (60) days of a final accounting provided by Attorneys unless otherwise agreed by the Parties in writing. Any

Client funds in the Attorneys' trust account may be put towards any unpaid balance of Costs at direction of the Client.

d. **In the event of judgment for defendants, Attorneys bear risk of taxed defense Costs except where Client reckless.** To the extent permitted by law and to the extent not based on the conduct of Client, Attorneys will bear the risk of any defense costs taxed against Client in the event of an adverse ruling (such as sanctions for spoliation of evidence) or taxable costs awarded to Judgment for defendants in the Swaps Action. As used in this section, "conduct" means the (i) failure to perform the terms of this Agreement; or (ii) any intentional reckless conduct which diverges from the Attorneys' recommended course of action and which results in either an adverse ruling or a Judgment for defendants. For this provision to apply, Attorneys would have to specifically advise in writing the specific advice they would deem subject to this provision where the failure to follow it would be reckless. The application of this provision as to a discrete adverse ruling does not necessarily implicate this provision as to a Judgment.

e. **Periodic statements of costs.** Attorneys will provide Client with periodic statements of Costs incurred in the Swaps Action at approximately quarterly intervals or at such other frequency as mutually agreed between Client and Attorneys. At any time, Client may communicate with Attorneys regarding Attorneys' estimates with regard to Costs that may be incurred in the future.

f. **Client outside expenses.** Expenses incurred by Client in connection with retention of additional consultants retained by Client, including outside counsel and/or experts, shall be paid for by Client and shall not be considered Costs for purposes of this Agreement.

11. REPRESENTATION OF ADVERSE INTERESTS. If Attorneys had a relationship with another party involved in the Swaps Action, or with someone who would be substantially affected by the Swaps Action, the Rules of Professional Conduct would require Attorneys to disclose that to Client so that Client could evaluate whether that relationship causes Client to have any concerns over Attorney's loyalty, objectivity or ability to protect Client's confidential information.

12. SETTLEMENT. Decisions regarding settlement of the case are reserved exclusively to the discretion of Client and the City Attorney. Attorneys will not settle Client's claim without the approval of Client, who will have the absolute right to accept or reject any settlement. Attorneys will notify Client of the terms of any settlement offer received by Attorneys.

13. ORDER OR AGREEMENT FOR PAYMENT OF ATTORNEY'S FEES OR COSTS BY ANOTHER PARTY. The court may order, or the parties to the dispute may agree, that another party will pay some or all of Client's attorney's fees, costs, or both. Any such order or agreement will not affect Client's obligation to pay contingency fees and Costs under this Agreement. However, subject to Paragraph 8 (contingent fee), any such amounts actually received by Attorneys will be credited against Attorneys' fees or Costs, respectively, incurred by Client.

14. DISCHARGE OF ATTORNEYS. Client may discharge Attorney(s) at any time by written notice effective when received by Attorney(s). Unless specifically agreed by Attorney(s) and Client, Attorney(s) will provide no further services and advance no further Costs on Client's behalf after receipt of the notice except as Client may direct in writing. If Attorney(s) are Client's attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Attorney(s).

In the event Attorney(s) are discharged without cause before the termination of the litigation, Client shall (i) reimburse such Attorney(s) for any and all Costs advanced by such Attorney(s) not later than ninety (90) days from receipt of a final cost accounting from Attorney(s), and (ii) upon termination of the litigation, pay such Attorney(s) a fee consisting of the reasonable value of Attorney(s)' services performed up to the point of the discharge. Nothing herein shall be construed to limit Client's rights and remedies in the event of a discharge of Attorney(s) for cause (which shall mean Attorney(s)' failure to perform his or its obligations under this Agreement), and upon a discharge for cause, Client shall not be obligated to reimburse Costs or pay the contingent fee in Section 8. In the event of a discharge of fewer than all Attorney(s), the provisions of this Paragraph 14 shall apply only with respect to the discharged Attorney(s).

15. WITHDRAWAL OF ATTORNEY. An Attorney may withdraw from representation of Client: (i) with Client's consent, (ii) upon court approval, or (iii) if no court action is filed, for good cause upon ninety (90) days' notice to Client; or (iv) at any time without cause upon ninety (90) days' notice to Client. Good cause is deemed upon Client's breach of this Agreement, Client's refusal to cooperate with Attorneys, or any other fact or circumstance that would render Attorneys' continuing representation unlawful or unethical. In the event of a withdrawal under clause (iv) above, the withdrawing Attorney will be entitled to retain any contingency fee payable with respect to any claims that have been resolved (including with respect to amounts owing in the future with respect to resolved claims).

16. CONCLUSION OF SERVICES. When Attorneys' services conclude, whether by completing the terms of this Agreement or by discharge (under Paragraph 14) or withdrawal (under paragraph 15), all unpaid charges (including fees under Paragraph 8 and Costs under Paragraph 10) will become due and payable, unless otherwise provided herein. Attorneys will notify Client in writing of the conclusion of services and provide an accounting of costs, fees, and other charges due. Attorneys are authorized to apply any Client funds held in one of Attorneys' client trust accounts to pay unreimbursed advanced Costs. Nothing in this Paragraph shall be construed as inconsistent with the other provisions of this Agreement, including but not limited to Paragraphs 8 and 10.

If at the conclusion of services, the Swaps Action is continuing with other legal counsel, Attorneys will cooperate fully in transferring all Client's papers and property, inform legal counsel of deadlines, and assist them in the transition of the Swaps Action.

17. LIEN. Except in situations where Attorneys withdraw or are discharged, such situations being governed by Sections 14 and 15, Client hereby grants Attorneys a lien on any and all claims or causes of action that are the subject of Attorneys' fee and/or Costs advanced under this Agreement. Attorneys' lien will be for any sums owing to Attorneys for any unpaid Costs (under Paragraph 10) or fees (under Paragraph 8) at the conclusion of Attorneys' services. The lien will attach to any Recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

18. RELEASE OF CLIENT'S PAPERS AND PROPERTY. At the termination of services under this Agreement, Attorneys will release to Client on request all of Client's papers and property. Client's papers and property include correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items in possession of Attorneys reasonably necessary to Client's representation.

19. CONFIDENTIALITY. This Agreement establishes the relation of attorney-client between the parties hereto. Attorneys shall hold all money and property of Client in trust for Client's benefit, with all funds deposited and managed in Attorney's client trust account as required by law, shall not divulge Client's confidences, and shall be entitled to the candid cooperation of all Client's employees in all matters related to the assigned files and any related actions. This Agreement shall be privileged and confidential subject to Business and Professions Code section 6149 and Evidence Code section 952 and 954.

20. DISCLAIMER OF GUARANTEE. Although Attorneys may offer an opinion about possible results regarding the subject matter of this Agreement, Attorneys cannot guarantee any particular result. Client acknowledges that Attorneys have made no promises about the outcome and that any opinion offered by Attorneys in the future will not constitute a guaranty.

21. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

22. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

23. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, approved and executed in the same manner as the initial Agreement.

24. MEDIATION CLAUSE. If a dispute arises out of or relating to any aspect of this Agreement between Client and Attorneys, or the breach thereof, and if the dispute cannot be settled through negotiation, Attorneys and Client agree to mediation pursuant to Paragraph 8(g) before resorting to litigation, or any other dispute resolution procedure. In the event of litigation, as legal damages would be difficult to establish, the parties are entitled to seek equitable remedies including specific performance.

25. NO AWARD OF ATTORNEYS' FEES OR COSTS IN ACTION ON AGREEMENT. Each party shall bear its own attorney's fees and costs incurred in any action or proceeding concerning or arising out of this Agreement, or efforts to negotiate the matter, and the parties shall share equally the costs of any arbitrator, mediator, or other decision maker in any forum.

26. PROFESSIONAL LIABILITY INSURANCE. Pursuant to California Rule of Professional Conduct 1.4.2.(a)3-410, Keller is informing Client in writing that Keller has professional liability insurance, and Miller is informing Client in writing that he has previously had professional liability insurance, will promptly apply for such insurance and anticipates that it will be in place no later than September 30, 2024.

27. GOVERNING LAW. The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of California. Any action to enforce this agreement will be venued in the Superior Court in and for the County of Contra Costa.

28. EFFECTIVE DATE OF AGREEMENT. This Agreement shall be effective on the date last executed below. Once effective, this Agreement will, however, apply to services provided by Attorneys on this matter before its effective date.

29. AUTHORITY OF PARTIES. Each of the signatories to this Agreement warrants that he or she has the authority to enter into and execute this Agreement and to bind the entity or entities on whose behalf each signs.

30. EXECUTION. This Agreement may be executed in duplicate counterparts. This Agreement and future documents relating to this Agreement may be digitally signed in accordance with California law. Any party to this Agreement may revoke such agreement to permit digital signatures at any time by providing written notice to the other party.

The foregoing is agreed to by:

Dated: _____ By **CITY OF RICHMOND**

Eduardo Martinez, Mayor

Attest:

Pamela Christian, City Clerk

Approved as to Form:

David Aleshire, City Attorney

Dated: _____ By **KELLER ROHRBACK L.L.P.**

Dated: _____

R. Bradley Miller

ATTACHMENT 1

Relativity License	\$150/per user monthly
All included Relativity hosting	\$15 per GB hosted monthly
Unlimited Analytics (Assisted Review, Email Threading, Near Duplicate, Categorization, Name Normalization)	Included
All pre and post file processing using Relativity Processing or iPro eCapture	Included

Keller Rohrback’s Legal Technology Group (“LTG”) is embedded with Keller Rohrback’s litigation teams to support the legal technology and complex eDiscovery needs for the firm’s matters and clients. LTG provides in-house consulting for data preservation and collection, data processing, document hosting, document review, and document production.

Keller Rohrback’s LTG manages and utilizes enterprise litigation support systems and software in-house to control and manage the entire electronic discovery reference model. This included harnessing the same industry standard software large national litigation support vendors use to process and host terabytes of data. These tools include iPro eCapture, Relativity Processing, and Relativity on premise for document review. The Relativity install includes unlimited data analytics providing assisted review technology, near de-duplication, email threading, and concept searching to increase review speed and analysis of large data productions. The cost of these enterprise systems are not charged a la carte like most outside third party providers, instead LTG charges a monthly per GB hosting rate for the final data set hosted in Relativity. This all-in rate includes pre and post data processing, productions, hosting, and analytics processing for duplicate identification, email threading, concept search, communication analysts and active learning/assisted review.

As provided in Section 10, these costs are a part of the Authorized Costs and are advanced by Attorneys and paid out of the Recovery.