

**RESOLUTION NO. 13-06**

**A RESOLUTION OF OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY APPROVING THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY'S ACTION TO APPROVE AGREEMENT NO. 13-59, AN ENGAGEMENT AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND EDWARD Z. KOTKIN TO SERVE AS COUNSEL TO THE OVERSIGHT BOARD**

**WHEREAS**, Assembly Bill 1X 26 (AB 26) was signed by the Governor on June 28, 2011 and upheld as constitutional by the California Supreme Court. On June 27, 2012, the Governor signed Assembly Bill 1484 (AB 1484). AB 26 and AB 1484 (together called the Dissolution Bills) eliminated California redevelopment agencies statewide, established successor agencies to pay, perform, and effectuate the enforceable obligations of the former redevelopment agencies and to wind down the affairs of the former redevelopment agencies; and

**WHEREAS**, the City of Montclair Redevelopment Agency ("Agency") is now a dissolved redevelopment agency pursuant to the Dissolution Bills; and

**WHEREAS**, by Resolution considered and approved by the City Council at an open public meeting, the City chose to become and serve as the "Successor Agency" to the dissolved Agency under the Dissolution Act; and

**WHEREAS**, as of and on and after February 1, 2012, the City serves and acts as the Successor Agency and is performing its functions as the successor agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to the review and approval by a seven-member oversight board ("Oversight Board"); and

**WHEREAS**, Section 34179 provides that the Oversight Board has fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188 of Part 1.85 of the Dissolution Act; and

**WHEREAS**, pursuant to Section 34179 of the Health and Safety Code, the Successor Agency's Oversight Board was formed and the initial meeting occurred on April 25, 2012; and

**WHEREAS**, the Oversight Board, pursuant to Section 34179(n) of the Health and Safety Code has requested to be provided with legal representation as provided for by law; and

**WHEREAS**, the Oversight Board directed staff to submit proposals to legal firms for representation and the Oversight Board interviewed legal firms responding to a request for proposals on May 8, 2013; and

**WHEREAS**, on June 19, 2013, the Oversight Board selected Edward Z. Kotkin to serve as counsel to the Oversight Board; and

**WHEREAS**, Successor Agency counsel has determined that the Successor Agency should enter into the agreement to pay for the services of legal counsel for the Oversight Board; and

**WHEREAS**, the Successor Agency approved Agreement No. 13-59 approving an Engagement Agreement with Edward Z. Kotkin to serve a legal counsel to the Oversight Board on August 5, 2013; and

**WHEREAS**, required by the law, the Oversight Board must approve the action of the Successor Agency regarding approval of the Engagement Agreement (Agreement No. 13-59) ; and

**WHEREAS**, pursuant to the Dissolution Act, the actions of the Oversight Board, including those approved by this Resolution, do not become effective for five (5)

business days pending any request for review by the California Department of Finance (DOF); and if DOF requests review hereof, it will have forty days from the date of its request to approve this Oversight Board action or return it to the Oversight Board for reconsideration and the action, if subject to review by DOF, would not be effective until approved by DOF.

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency does hereby find and determine as follows:

**Section 1.** The above recitals are true and correct and are a substantive part of the Resolution.

**Section 2.** The Successor Agency authorized at its meeting of August 5, 2013, that this Resolution be transmitted to the Oversight Board for consideration.


**Section 3.** The Oversight Board approves the actions of the Successor Agency in approving Agreement No. 13-59 with Edward Z. Kotkin to provide legal counsel to the Oversight Board.

**Section 4.** The Secretary of the Oversight Board shall certify to the adoption of this Resolution and shall maintain this Resolution on file as a public record as approved hereby.

**APPROVED AND ADOPTED** this 14th day of August, 2013.

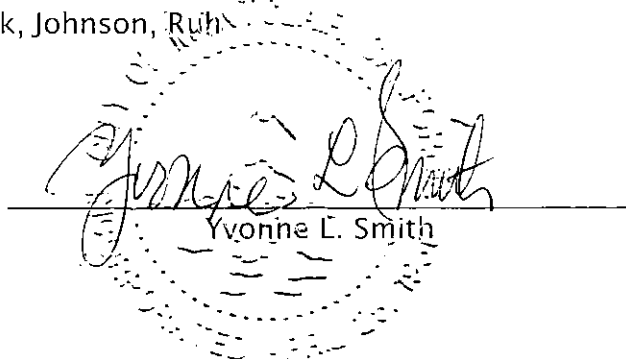
  
\_\_\_\_\_  
Chairman

**ATTEST:**

  
\_\_\_\_\_  
Secretary

I, Yvonne L. Smith, Secretary of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 13-06 was duly adopted by the Oversight Board of Directors at a regular meeting thereof held on the 14th day of August, 2013, and that it was adopted by the following vote, to-wit:

AYES: Stallings, Richardson, Kulbeck, Johnson, Ruh  
NOES: None  
ABSTAIN: None  
ABSENT: Erickson, Catlin

  
\_\_\_\_\_  
Yvonne L. Smith

Agreement No. 13-59

## ENGAGEMENT AGREEMENT

**THIS ENGAGEMENT AGREEMENT** is made between the Successor Agency to the City of Montclair Redevelopment Agency, a California local governmental agency (referred to as "SA"), and The Law Offices of Edward Z. Kotkin, a Professional Law Corporation ("Lawyer"). SA engages Lawyer, pursuant to the terms and conditions of this Agreement, to serve as independent general counsel to the Oversight Board for the SA ("Client"), and SA and Lawyer hereby agree, and Client hereby acknowledges, as follows:

1. **Services.** SA engages Lawyer to provide all legal services ("Services") reasonably required to represent Client in connection with the matter(s) ("Matter") described in the attached SCHEDULE "A" OF SERVICES ("Schedule"), as well as such other matters as may be specifically directed by Client; as noted below, if litigation is instituted or defended, an additional retainer deposit may be required prior to commencing representation on litigation. SA and Client shall be truthful with Lawyer in discussing the Matter and shall keep Lawyer apprised of all developments regarding the Matter. SA and Client understand and agree that Lawyer represents Client, and not the SA. As such, while the SA now contracts with Lawyer, the SA shall have no attorney-client relationship with Lawyer. SA understands and agrees to the duties defined herein, with no requirement or expectation that any Services shall be rendered on behalf of the SA. Client is the intended sole and exclusive third party beneficiary of this Agreement and all Services to be provided hereunder. Client acknowledges that this Agreement has been negotiated, prepared and executed, by and between the SA and Lawyer, to Client's satisfaction.

2. **Fees.**

A. SA agrees to compensate Lawyer for Services at the hourly rates set forth in SCHEDULE "B" – FEES attached to this Agreement. Fees will be billed by each time-keeper in one-tenth (1/10) hour increments. These fees are subject to increases from time to time as may be agreed to between Client and Lawyer.

B. Time billed to SA's account for Services to Client may include, without limitation, time spent waiting in court, time spent in travel and time spent in office conferences between the legal personnel assigned to the Matter. When such personnel engage in office conferences, each person will account for the amount of time expended. Likewise, if more than one of Lawyer's legal personnel attends a meeting, court hearing or other proceeding, each will account for the amount of time expended. Adjustments in time to reflect value of research and development that was previously done may be made; but in

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no case will such exceed the actual time that would be expended had such research and development not previously been done in part or whole by the firm on another matter.

C. Lawyer may furnish SA and/or Client with estimates of the amounts of fees that will be charged for certain Services from time to time. All such estimates are provided for budgeting purposes. These estimates are by their nature inexact and are not binding. However, Lawyer will endeavor to realize estimates wherever possible.

D. In acknowledging its satisfaction with this Agreement as evidenced by the signature below, Client warrants and covenants to Lawyer that it shall take such actions as may prove necessary consistent with SA's duty to pay Lawyer's fees hereunder.

E. **Costs and Expenses.** SA agrees to pay Lawyer all costs and expenses incurred in rendering Services. However, Lawyer shall not be required to advance any amount to pay costs or expenses attributable to Client. Costs and expenses may include, without limitation, long-distance telephone calls, messenger and other delivery fees, postage, charges for computer research and outside assisted legal research, such as parking, which shall be in addition to the hourly rates for travel time, clerical staff, overtime, word processing charges, process server's fees, filing fees and other charges assessed by courts and other public agencies, court reporter's fees, jury fees, witness fees, investigator's fees, expert's fees or consultant's fees, copy costs (at our customary rate, unless volume and then allows for copying by outside service), and other similar items. Except as may be listed on the Schedule, all such items will be charged to Client at Lawyer's cost. No substantial costs will be incurred without Client's advance approval. In acknowledging its satisfaction with this Agreement as evidenced by the signature below, Client warrants and covenants to Lawyer that it shall take such actions as may prove necessary consistent with SA's duty to pay Lawyer's costs and expenses hereunder.

3. **Statements.** Lawyer will send SA, and upon request make available to Client statements on a monthly basis setting forth the fees and costs incurred by Client. SA shall pay each such statement upon receipt. SA shall notify Lawyer promptly in writing if SA disputes any entry for legal services or costs on any statement; and if SA fails to do so within thirty (30) days after receipt thereof, all such entries shall be acknowledged as correct as between Lawyer and SA. If SA so requests, Attorney will provide a statement within ten (10) days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount. SA understands and agrees that Lawyer reserves the right to redact any statement that contains attorney-client privileged communication or other information arising from or related to Lawyer's Services to Client. SA and Lawyer agree that Lawyer's transmission of statements to SA does not constitute a waiver of attorney-client privilege as between Lawyer and Client. In all instances, SA requires and Lawyer agrees that Client may request and shall promptly receive any statement hereunder, without redaction.

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4. **Deposit.** At this time, no deposit is requested, as reflected in Schedule "A." At any time during the representation of Client, Lawyer may request a retainer to be used as a deposit as security against future fees and, if Lawyer's services are required for litigation, an additional retainer may be required. Typically, the amount to be requested as an additional retainer will be equal to Lawyer's estimate of a high month's worth of fees to be incurred in connection with Lawyer's representation of Client.

5. **Results.** Lawyer has made no promises or guarantees to SA or to Client concerning the outcome of the Matter, and nothing in this Agreement shall be construed as such a promise or guarantee.

6. **Termination of Services.**

A. Client shall have the right to terminate Lawyer's services at any time upon written notice to Lawyer. SA understands and agrees that only Client may terminate Lawyer. Termination hereunder shall not relieve SA of the obligation to pay the amounts owed to Lawyer for Services rendered and costs incurred prior to such termination. After receiving a termination notice, Lawyer shall immediately cease to render additional Services, except for such services as Lawyer may be required to provide under applicable law or as Lawyer deem reasonably necessary to transfer the Matter to Client or to successor legal counsel, and Lawyer shall be compensated for all such services. Client will fully cooperate with Lawyer's efforts to withdraw and transfer the Matter.

B. Lawyer and Client shall have the right to terminate this Agreement at any time upon written ninety (90) day prior written notice. After delivering such termination notice, Lawyer shall immediately cease to render additional Services, except for such services as Lawyer may be required to provide under applicable law or as Lawyer deem reasonably necessary to transfer the Matter to Client or to successor legal counsel. Upon such termination, Client shall take all steps necessary to free Lawyer of any obligation to perform further legal services, including without limitation, the execution of any documents necessary to complete Lawyer's discharge or withdrawal. The rights of Lawyer hereunder are in addition to those created by statute or recognized by rules of professional conduct.

7. **Arbitration.**

A. Other than a dispute over the amount of fees or costs due and owing, any dispute concerning the rights of either Client or Attorney hereunder, including, but not limited to, any dispute over alleged malpractice, shall, if any such dispute cannot be resolved between Client and Lawyer, be decided by arbitration by a retired judge of the Superior Court to be agreed upon by the parties. SA understands that Client may well be entitled to a jury trial as to any claim against Lawyer for malpractice or for other claims and with Client's authorization evidenced by the acknowledgment below, hereby waives hereby any such right. The SA represents that it has had the opportunity to consult independent counsel of its

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choice regarding its waiver of any right to a jury as specified above and as to the other terms of this Agreement, and has either done so or has knowingly and willingly of its own free choice chosen not to consult such independent counsel. In acknowledging this Agreement below, Client makes an equivalent and coextensive representation to Lawyer. If the parties cannot agree upon an arbitrator, the presiding judge of the Superior Court of San Bernardino shall be requested to appoint a retired judge to act in such capacity, upon petition of any party hereto. In the event the presiding judge fails or refuses for thirty (30) days after a request to make such appointment, the court shall be petitioned to appoint a lawyer licensed to practice in California as sole arbitrator.

The prevailing party in any proceeding, whether arbitration, Superior Court or Federal Court action, related to any provision of this agreement will be awarded attorneys' fees and costs incurred in that action or proceeding, including without limitation the value of the time spent by Lawyer to prosecute or defend such an action, or support other counsel in the prosecution or defense of such action calculated at the hourly rates(s) then normally charged by Lawyer to clients which it represents on an hourly basis.

**B.** In the event of a dispute hereunder over the amount of fees or costs due and owing to Lawyer, Lawyer is required to serve SA and Client, prior to or at the time of filing an action or other proceeding against Client, *via* personal service or first class mail, the California State Bar's "Notice of Client's Right to Arbitrate" form. Client's failure to request arbitration within thirty (30) days after receipt of the "Notice of Client's Right to Arbitrate" form from Lawyer shall be deemed a waiver of Client's right to arbitration. (California Business & Professions Code § 6201.) In the event of Client's failure to request arbitration within thirty (30) days, Lawyer in their discretion shall have the right to proceed with an action to collect fees and costs either via a civil action or by arbitration. In the event that Client elects to arbitrate the fee dispute within thirty (30) days or Lawyer choose to proceed with arbitration following Client's waiver of its right to arbitrate, such arbitration shall be held in accordance with the procedures of the California State Bar Association.

The prevailing party in any proceeding for the collection of fees and costs, whether by arbitration or Superior Court action, will be awarded attorneys' fees and costs incurred in that action or proceeding, including without limitation the value of the time spent by Lawyer to prosecute or defend such an action, or support other counsel in the prosecution or defense of such action calculated at the hourly rates(s) then normally charged by Lawyer to clients which it represents on an hourly basis.

## **8. Entire Agreement.**

**A.** This Agreement contains the entire understanding among the parties hereto and supersedes any prior understandings and agreements among them with respect to the subject matter herein. There are no representations, agreements, arrangements or understandings among the parties, oral or written, relating to the subject matter of this

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Agreement that are not fully expressed herein. Any statements, promises or inducements, whether made by any party or agent of any party, that are not contained in this written Agreement shall not be valid or binding. This Agreement may not be enlarged, modified, or altered except by a written agreement signed by all the parties hereto.

**B.** The place of performance of this Agreement shall be California. Client hereby agrees to submit to the jurisdiction of the California State or Federal Courts in the County of San Bernardino or any adjacent county with respect to any action that is brought to enforce the terms of this Agreement.

**C.** It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of California, both as to interpretation and performance.

**9. Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction or arbitrator to be illegal or unenforceable, said provision shall be deemed to be severed and deleted and neither such provision, its severance nor its deletion shall affect the validity of the remaining provisions of this Agreement.

**10. Notice.** All notices, requests, demands or other communications necessary to be given hereunder shall be in writing and shall be deemed to have been given if delivered or if mailed by United States Mail, postage prepaid, to the parties at the following addresses (or at such other addresses as a party may notify the other party of in writing in accordance with this section).

If to Lawyer, address to:

The Law Offices of Edward Z. Kotkin  
1851 East First Street, Suite 900  
Santa Ana, CA 92705-4066  
Attention: Edward Z. Kotkin, Esquire

If to Client, address to:

Oversight Board for the Successor Agency to  
the City of Montclair Redevelopment Agency  
5111 Benito Street  
Montclair, CA 91763

**Marked as follows:**

**"Only to be opened by Oversight Board Staff"**

**11. Cooperation of Clients.** It is understood and agreed that SA shall notify Lawyer of any change of address or telephone number(s) where SA and/or Client can be reached and shall furnish sufficient information so that Client may be contacted in a reasonable and timely manner during the course of Lawyer's representation of Client. It is further understood and agreed that if the representation of Client involves litigation in the State of California, it may require the presence of Client or its representative, at its expense, for the purpose of discovery or trial. It is further understood and agreed that successful defense of any litigation will require the cooperation and assistance of Client which Client

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agrees to give to Lawyer. It is further understood and agreed that the absence of reasonable cooperation will, at Lawyer's option, be sufficient grounds to warrant withdrawal of Lawyer from representation of Client.

**12. Retention/Destruction of Client's File.**

A. Client is entitled to a copy of the file materials maintained or generated by Lawyer with respect to Client's representation by Lawyer, except those undisclosed work product materials reflecting Lawyer's impressions, conclusions, opinions, legal research, or theories, internal accounting records and other documents not reasonably necessary to Client's representation (hereinafter "Client File"), upon reasonable notice and at Client's expense. Where Lawyer withdraws, Client cancels this Agreement and substitutes Lawyer out as attorneys of record in any litigation in which Lawyer were representing Client, or upon completion of the work for which Lawyer were retained by Client, Client is entitled, upon giving Lawyer reasonable notice, to custody of the original Client File and Lawyer, at their expense, are entitled to keep a copy of any of said Client File materials they deem desirable.

B. Subject to Paragraph 12.A. above, at the conclusion of the handling by Lawyer of the Matter to which this Agreement pertains, Lawyer may at any time, at Lawyer's absolute discretion, store the original Client File or destroy all or part of said file. Subject to Paragraph 12.A. above, and unless other arrangements are made, under Lawyer's document retention policy, Lawyer will begin to destroy portions of the original Client File once the Matter is closed. Should Client wish to retain the Client File or any portion thereof after the Matter is closed, Client must contact Lawyer at the time the Matter is concluded.

**13. Errors and Omissions Insurance Coverage.** Lawyer represents that they maintain errors and omissions insurance coverage applicable to the services to be rendered under this Agreement. The policy limits of that coverage are one million dollars (\$1,000,000) per claim, and one million dollars (\$1,000,000) in the aggregate.

**14. Waiver re Payment of Client Fees by Another Party.** In connection with this Agreement, Lawyer is required by California Rules of Professional Responsibility, Rule 3-310(F) and Business and Professions Code section 6068 to obtain a waiver of conflicts from the Client because a third party (the SA) will be responsible for legal fees and costs incurred by Lawyer in representing Client. The SA will have no right to instruct Lawyer in matters pertaining to Services by Lawyer to Client. Unless Client gives Lawyer written permission to discuss all or a portion of Client's matters with the SA, Lawyer will not disclose any confidential or attorney-client privileged information to the SA or its officials. By signing this Agreement and initialing below this paragraph, Client consents to this arrangement, formally acknowledges that Attorney has advised Client of the advantages and disadvantages of this arrangement, and has afforded Client the opportunity to seek independent counsel to advise on the effect of this paragraph.

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**William Ruh**

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This Agreement, consisting of eleven (11) pages, including schedules, may be executed in counterparts, each of which may be deemed an original, and taken together they shall constitute one and the same Agreement. Facsimile or electronic signatures shall have the same effect as original signatures.

**ACCEPTED:**

**SUCCESSOR AGENCY TO THE CITY OF  
MONTCLAIR REDEVELOPMENT AGENCY,**  
a California local agency

Dated: 8.12.13

Paul M. Eaton  
Paul M. Eaton  
Chairman

**ATTEST:**

Yvonne L. Smith  
Yvonne L. Smith, Deputy Secretary

**APPROVED AS TO FORM:**

David R. McEwen  
David R. McEwen, Esq.  
Counsel for Successor Agency

**ACCEPTED:**

**THE LAW OFFICES OF EDWARD Z.  
KOTKIN**

Dated: 8/28/13

Edward Z. Kotkin  
Edward Z. Kotkin, Esquire  
Principal

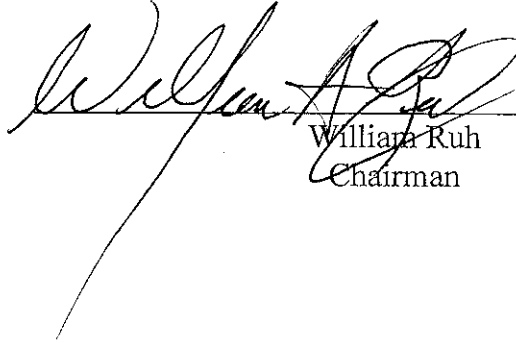
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**ADDITIONAL SIGNATURE FOLLOWS**

ACKNOWLEDGED AND AGREED TO:

**OVERSIGHT BOARD FOR THE SUCCESSOR  
AGENCY TO THE CITY OF MONTCLAIR  
REDEVELOPMENT AGENCY, a California  
local agency**

Dated: 29, August 2013

  
\_\_\_\_\_  
William Ruh  
Chairman

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**SCHEDULE "A" OF SERVICES**

**Matter:**

- 1) Representation regarding Oversight Board activities and board member duties, obligations and responsibilities.
- 2) Other matters, within the scope of the Oversight Board, as requested.

**Deposit:**

None

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**SCHEDULE "B" – FEES**

**HOURLY RATES, FEES & COSTS**

Proposal for Legal Services to the Oversight Board for the Successor Agency  
to the City of Montclair Redevelopment Agency

<b>General Legal Services Provided at the Hourly Rate of \$225 per hour</b>	Attendance at all Oversight Board meetings ( <i>with charges billed for travel time as specified below</i> ); attendance at Oversight Board management staff meetings and other routine meetings as requested by the Oversight Board; consultation with Oversight Board members and management on legal issues as requested; review of public meeting agendas, agenda submittals, and minutes of Oversight Board meetings; provision of routine legal advice on behalf of the Oversight Board and the issuance of legal opinions, as requested by the Oversight Board; monitoring and review of proposed and enacted legislation affecting the Oversight Board; the preparation or review of routine Oversight Board resolutions; routine advice on government ethics and conflicts of interest.
<b>Hourly Rates for Services Not Included in General Legal Services Above</b>	Specialized Non-Litigation Legal Services (items not listed above) \$225 per hour Litigation: \$325 per hour
<b>Paralegal Services</b>	\$125 per hour
<b>Travel Time</b>	\$150 per hour

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## HOURLY RATES, FEES & COSTS

### Proposal for Legal Services to the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency

#### Reimbursement of Costs

Messenger & Deliver Fees.....	At Actual Cost
Postage.....	USPS Standard Rate
Copies.....	\$0.25/page
Color Copies.....	\$0.50/page
Outgoing Faxes.....	\$1.00/page
Copies (Outside Service).....	At Actual Cost
In-House CD Production.....	\$10.00/CD
Computer Research.....	At Actual Cost (percentage of firm's monthly usage under plan)
Outside Assisted Legal Research.....	At Actual Cost
Parking.....	At Actual Cost
Airfare.....	At Actual Cost
Meals.....	At Actual Cost
Hotel Accommodations.....	At Actual Cost
Process Server's Fees/Filing Fees.....	At Actual Cost
Court Reporter's Fees.....	At Actual Cost
Jury Fees.....	At Actual Cost
Witness Fees.....	At Actual Cost
Expert's Fees.....	At Actual Cost
Consultant's Fees.....	At Actual Cost

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