

RESOLUTION NO. 10-436

A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO EXECUTE AN ENGAGEMENT LETTER WITH ANDREWS KURTH, LLP, ATTORNEYS AT LAW TO SERVE AS BOND COUNSEL FOR THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") shall require the services of bond counsel to assist in future issuance of debt; and

WHEREAS, the City Council has been satisfied with the performance of Tom Sage who is now a partner with Andrews Kurth, LLP; and

WHEREAS, the City Council deems it is in the best interest of the City and/or the PAEDC to continue the relationship with an attorney that is entirely familiar with the background and circumstances of the City's and PAEDC finances.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the City Council hereby authorizes the PAEDC to execute the engagement letter with Andrews Kurth, LLP as attached hereto as **Exhibit "A"**.

Section 3. That a copy of the caption of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 5th day of Oct. A.D., 2010,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Ars Sem Albright;

Councilmembers Chatman, Segler, Hood, Beard
and Henderson.

NOES: None.

Deloris Prince
Deloris "Bobbie" Prince, Mayor

ATTEST:

Sherri Bellard
Sherri Bellard, Acting City Secretary

APPROVED:

Floyd Batiste
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

Guy N. Goodson
Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

Valecia R. Tizeno
Valecia R. Tizeno, City Attorney

EXHIBIT "A"

ANDREWS
ATTORNEYS **KURTH** LLP

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Houston, Texas 77002
713.220.4200 Phone
713.220.4285 Fax
andrewskurth.com

Thomas Sage
713.220.3833 Phone
713.238.5040 Fax
TomSage@andrewskurth.com

September 3, 2010

Ms. Rebecca Underhill
Assistant City Manager/Administration
City of Port Arthur
444 - 4th Street
Port Arthur, Texas 77640

Re: *Bond Counsel Services - City of Port Arthur 4A Economic Development Corporation*

Dear Becky:

Attached for consideration and execution are two copies of our engagement letter to serve as bond counsel for the City of Port Arthur 4A Economic Development Corporation. Please retain one copy for your file and return the remaining copy to my attention.

Very truly yours,


Thomas Sage

Enclosures (2)

September 3, 2010

Board of Directors
City of Port Arthur 4A Economic
Development Corporation
444 Fourth Street
Port Arthur, Texas 77640

Re: *Bond Counsel Services*

Dear Board Members:

We are pleased to submit to you a proposed agreement for Andrews Kurth LLP, Houston, Texas ("AK") to serve as Bond Counsel with respect to certificates of obligation, bonds and other debt obligations that the City of Port Arthur 4A Economic Development Corporation (the "Corporation") intends to issue. (Such bonds, notes and obligations are collectively referred to in this letter as the "Bonds.") When approved by you, this letter will become effective and will evidence an agreement between the Corporation and Andrews Kurth LLP.

As Bond Counsel, AK would prepare all required legal proceedings and would perform certain other necessary legal work in connection with the Corporation's authorization, issuance and sale of each series of the Bonds. Our services as Bond Counsel would include the following Basic Services, which we would carry out directly or in concert with officials and staff of the Corporation:

1. Assistance, in consultation with Corporation officials and staff and the Corporation's financial advisor, in the evaluation of legal matters related to financing innovations and opportunities that may arise from time to time;
2. Consultation with Corporation officials and staff to review information to be included in the offering documents for each series of Bonds, but only to the extent that such information describes such series, the security therefor, their federal income tax status and our opinion;

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3. Preparation of the ordinances or resolutions authorizing issuance of each series of the Bonds and all other instruments which comprise the transcript of legal proceedings pertaining to the authorization, issuance and sale of each such series;
4. Attendance at meetings, to the extent required or requested by the Corporation's executive staff or the Corporation's financial advisor, to discuss the sizing, timing or sale of each series of the Bonds;
5. Preparation and submission of transcripts of legal proceedings pertaining to the issuance of each series of the Bonds to the Attorney General to obtain an approving opinion;
6. Supervision of the printing of each series of the Bonds and the delivery thereof to the purchasers;
7. Prior and in connection with the closing of each series of the Bonds, giving advice to the Corporation to enable appropriate officials to comply with the arbitrage requirements of the Internal Revenue Code of 1986 as they affect the Bonds, including yield restrictions and rebate requirements;
8. At closing, render a legal opinion to the effect that the Bonds have been duly authorized in accordance with the Constitution and laws of the State, that the Bonds constitute valid and legally binding obligations of the Corporation secured by the revenues or funds pledged to their payment in the ordinance authorizing the issuance of the Bonds (subject to the exercise of judicial discretion in accordance with general principles of equity, and to the valid exercise of the sovereign powers of the State and the constitutional powers of the United States of America, and to bankruptcy, insolvency, reorganization, moratorium and other similar laws in effect from time to time relating to or affecting creditors' rights), and (ii) that, subject to certain restrictions, interest on Bonds (issued as tax-exempt obligations) is excludable from the gross income of the owners thereof for federal income tax purposes under then existing law; provided that, after the closing, we do not undertake, unless specifically engaged by the Corporation to do so as an Additional Service to provide continuing advice concerning any actions necessary to assure that interest paid on the Bonds will continue to be excludable from gross income for federal income tax purposes;
9. Attendance at bond sale, signing, closing and all other meetings and conferences as deemed necessary by the Corporation;
10. Preparation of Federal Income Tax Form 8038-G; and
11. Any other service necessary to the planning, authorization, issuance, sale and delivery of the Bond issues, as may be appropriate.

In addition to the foregoing Basic Services, as Bond Counsel, AK is prepared to undertake the following Additional Services, as directed by the Corporation:

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1. Preparation and assistance in the preparation of materials related to application to the Texas Water Development Board for various funding mechanisms provided by and available from the Texas Water Development Board;
2. Preparation of necessary ordinances, resolutions, notices, U.S. Department of Justice submissions and other legal documents necessary to call and conduct an election to authorize the issuance of Bonds, if necessary;
3. Disclosure work or similar services (other than the limited review of certain sections of the offering documents for the Bonds as described in paragraph (5) under Bond Counsel Basic Services above) to assist the Corporation in the preparation of such offering documents, on such basis and to such extent as shall be directed by the Corporation;
4. Attendance at rating agency presentations, investor meetings or other presentations relating to the marketing of the Bonds and consultation with Corporation officials, staff and advisors and the Corporation's financial advisor to develop such presentations;
5. Preparation of the "Blue Sky" surveys or securities registration services;
6. Any other special services not ordinarily required in connection with the issuance of obligations of the nature of the Bonds, including services rendered in connection with special federal income tax issues, unusual issues arising in connection with the Corporation's financial reports or audits, any documentation or related services for credit or liquidity facilities or enhancements or other special structuring techniques or devices to be employed in connection with the issuance of any series of the Bonds; and
7. After the closing of any series of the Bonds and upon specific request of the Corporation, providing assistance to the Corporation concerning questions and issues that may arise prior to the maturity of the Bonds.

Unless otherwise agreed to by the Corporation and AK, for all Basic Services performed hereunder in connection with the issuance and sale of Bonds, as defined in this letter, AK will be paid a fee of \$40,000, with such fee to be paid from bond proceeds and is contingent on the delivery of the Bonds.

The fee for any Additional Bond Counsel Services provided by AK will be determined on an hourly rate basis, applying rates then charged by AK for the same or similar services performed by attorneys and paralegals of similar experience for other clients. The total fee for Additional Services prior to and in connection with the closing of any series of Bonds will not exceed the fee charged for Basic Services for such series.

Payment of all fees for services as Bond Counsel will be made after the issuance and delivery of the series of the Bonds in connection with which such services are performed and within 30 days after receipt by the Corporation of an approved invoice therefor. AK will be reimbursed for its reasonable and actual out-of-pocket expenses, such as the cost of reproduction of documents, out-of-town travel, long-distance telephone, telecopy and similar expenses,

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deliveries, filing fees and all items paid for by AK on behalf of the Corporation, incurred in connection with the performance of any services hereunder. All of such expenses will be reasonable, and on an issue-by-issue basis AK will agree to a maximum amount of \$1,500 for such expenses (exclusive of Attorney General fees, for which the Corporation would be responsible).

The Corporation acknowledges that it is aware that AK represents many other governmental entities, companies and individuals. It is possible that during the time that we are representing you, some of our present or future clients will have disputes or transactions with you. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any other such other matter by such client to your material disadvantage.

Nothing herein shall be construed as creating any personal liability on the part of any officer of the Corporation, and this agreement may be terminated by the Corporation by giving 30 days' written notice to AK.

If this proposed agreement for the services of AK as Bond Counsel is satisfactory, please evidence your acceptance and approval by executing the two copies in the space provided below, retaining one copy for your files and returning the other copy to my attention.

ANDREWS KURTH LLP

By: 

Thomas Sage
Partner

APPROVED and ACCEPTED:

City of Port Arthur 4A Economic Development Corporation

By: _____
Name: _____
Title: _____
Date: _____