

JOHN M. WAGNER  
PARTNER  
[jwagner@certilmanbalin.com](mailto:jwagner@certilmanbalin.com)

March 21, 2023

**BY E-MAIL TO [citymanager@longbeachny.gov](mailto:citymanager@longbeachny.gov)**  
**AND [jlupo@longbeachny.gov](mailto:jlupo@longbeachny.gov)**

The City of Long Beach  
c/o Ronald J. Walsh, Acting City Manager  
City Hall, Fifth Floor Room 506  
1 West Chester Street, Long Beach, NY 11561

Re: **Retainer Letter for 2023 Services and Expenses**

Honorable Members of the City Council:

Certilman Balin Adler & Hyman, LLP (“CBAH”) respectfully presents this retainer letter to the City of Long Beach (the “City”) for legal work and expenses, during the calendar year 2023, with respect to the “Empire Wind 2 Project” (the “Project”), which is currently the subject of (1) an application by Empire Wind Offshore LLC (“Empire Wind”) to the New York State Public Service Commission for a “Certificate of Environmental Compatibility and Public Need,” pursuant to Article VII of the New York State Public Service Law (“PSL”), for the portions of the Project that lie within New York State, and (2) ongoing environmental impact review by the U.S. Department of the Interior’s Bureau of Ocean Energy Management (“BOEM”). We understand the Project, which is being sponsored by Equinor Offshore Wind LLC (“Equinor”), in partnership with BP, proposes the installation of up to 147 wind turbines, with the potential of supplying at least 1,260 Megawatts (MW) of renewable electricity, in BOEM-designated Renewable Energy Lease Area OCS-A 0512, which is under Federal jurisdiction and lies between 15 and 30 miles off the southern coast of Long Island. The Project will also entail construction of two offshore substations, as well as transmission lines proposed to come ashore in Long Beach and traverse underground until they interconnect with the Barrett 138-kV substation in Oceanside, New York. Approximately 12 miles of such transmission lines will run between the boundary of New York State territorial waters and the proposed interconnection point in Oceanside.

The City of Long Beach  
March 21, 2023  
Page 2 of 6

CBAH is prepared to represent the City, subject to the terms and conditions of this retainer agreement, with regard to the following matters related to the Project (hereinafter referred to as the “subject matters”):

1. Review of filings and submissions by Equinor and Empire Wind, and their respective partner(s) and consultants, for and in connection with the pending application for a PSL Article VII “Certificate of Environmental Compatibility and Public Need” for the Project;

2. Representation of the City’s interests as a party in the pending PSL Article VII proceedings for the Project, including, but not limited to, attendance at public hearings and participation in negotiation, drafting, and settlement meetings with respect to the requested PSL Article VII “Certificate of Environmental Compatibility and Public Need” for the Project, and the conditions of such Certificate;

3. Negotiations with Equinor, Empire Wind, and their respective partners, consultants, and legal counsel, with respect to, among other things, (a) finalization of the proposed ocean landing location in the City and the routes, extents, and depths of Project transmission cables and other facilities passing through or located within the City; (b) appropriate limitations on construction days and hours, as well as Project commencement and completion dates; (c) location, extent, and management of construction staging areas; (d) identification and elimination or mitigation of potential adverse environmental, construction, restoration, operational, maintenance, and decommissioning impacts from the Project (including, but not limited to, adverse traffic, noise, air quality, light pollution, fugitive dust, and soil and water quality impacts); (e) dewatering methodologies and safeguards during Project construction; (f) restoration of City roadways and other facilities following Project construction; (g) beach renourishment and other appropriate measures to ensure that Project transmission facilities within the City, including, but not limited to, beneath the City shoreline, remain buried at appropriate depths (e.g., after coastal storms and other shoreline-altering events) and that any post-construction subsidence of City roads are promptly identified and remediated; (h) appropriate bonding measures to ensure satisfactory completion of Project construction, maintenance, site and roadway restoration, and decommissioning activities; (i) procedures for identification, handling, and disposal of hazardous wastes, contaminated soil, contaminated water, etc. encountered or generated during Project construction, operation, maintenance, or decommissioning; (j) appropriate insurance coverages to be provided and maintained, in favor of the City, by Equinor, Empire Wind, and their respective contractors and employees with respect to construction and other activities associated with the

The City of Long Beach  
March 21, 2023  
Page 3 of 6

Project; (k) appropriate indemnification and reimbursement of the City with respect to claims arising from or in connection with the Project, and administrative and litigation expenses incurred by the City in connection with the Project; (l) appropriate Project supervision and reporting; and (m) proposed future decommissioning of the Project and its facilities;

4. Review of documentation for environmental impact review of the Project by the Federal Bureau of Ocean Energy Management (“BOEM”);

5. Interaction with BOEM regarding City environmental concerns during BOEM’s environmental impact review of the Project;

6. Consultation with City officials regarding City priorities/objectives with regard to community benefits to be realized through the City’s hosting of the transmission cables and facilities for the Project;

7. Consultation with City officials regarding public concerns expressed about the Project and its potential environmental impacts;

8. Negotiation, drafting, and execution of a community benefits package and agreement between Equinor and/or Empire Wind and the City for the Project (including, but not limited to, fees to be paid to the City by Equinor and/or Empire Wind with respect to any easement or other land use agreements required for construction, maintenance, or decommissioning of the Project and/or its facilities;

9. Negotiation, drafting, execution, and filing/recording of temporary and terminable easement and/or other appropriate property or land use agreements to facilitate installation, maintenance, and ultimate decommissioning of Project transmission cables and other facilities within the City;

10. Consultation with City officials and corporation counsel, as requested, with regard to parkland alienation authorization(s) required for the Project;

11. Representation of the City and its officials (in their official capacities) in litigation and administrative review proceedings related to the Project, including, but not limited to, litigation challenging (a) any PSL Article VII “Certificate of Environmental Compatibility and Public Need” issued with respect to the Project, (b) any community benefits agreement(s) reached between Equinor, Empire Wind, and/or their partner(s) and the City with respect to the Project, (c) any easement or other land use agreements prepared and/or executed in connection with the Project, and (d)

The City of Long Beach  
March 21, 2023  
Page 4 of 6

environmental issues related to the Project, both within the City limits and in ocean and bay waters and bottomlands surrounding the City; and

12. Other matters reasonably related to the Project, as requested by City officials.

In general, CBAH's fees for legal services are based on the time spent on matters by our attorneys and paralegals and the hourly rates described below. The hourly billing rates for our attorneys and paralegals during 2023, which would remain in force through such year, would range between \$550.00 and \$600.00 for partners (I would personally bill at \$575.00 per hour during 2023) between \$300.00 and \$475.00 for associates and counsel, and between \$150.00 and \$255.00 for paralegals, Notwithstanding the foregoing, CBAH would apply, as a courtesy to the City, a 15% discount against our bills for services based on the foregoing rates. The aforesaid hourly rates are subject to change on an annual basis after 2023. We endeavor to assign work, to the extent feasible, so as to maximize our legal effectiveness and time efficiency and to minimize legal expenses.

In addition to fees for legal services, CBAH would bill for any costs and expenses (including, but not limited to, consultants' and experts' fees and expenses, express delivery fees, and printing and photocopying expenses) that CBAH incurs during its representation of the City for the subject matters set forth above. The City hereby authorizes CBAH to incur all reasonable costs and expenses that are reasonably necessary for the subject matters, in CBAH's judgment, although CBAH would seek approval of the City before retaining any consultants or experts or incurring any cost or expense in excess of \$500.00. CBAH is not obligated to advance costs or expenses on behalf of the City, and the City agrees, when requested, to pay such costs or expenses in advance. All costs and expenses paid by CBAH will be billed as disbursements and included in CBAH's written statements.

CBAH bills for all time expended on matters in units of tenths of an hour. CBAH will provide the City written statements setting forth descriptions of the work undertaken during the time periods covered by the statements, the person(s) who performed the work, the amounts of time devoted to the work performed, and the costs and expenses advanced by CBAH on behalf of the City. The City agrees to pay all amounts within 30 days of the date of CBAH's invoice. If CBAH's fees and/or costs or expenses are not paid within 45 days of the date of CBAH's invoice, CBAH may treat such failure as the decision of the City to terminate CBAH's services, whereupon CBAH may withdraw as attorneys for the City in accordance with the procedures set forth below and any applicable Court requirements.

The City of Long Beach  
March 21, 2023  
Page 5 of 6

CBAH's representation of the City is limited to the subject matters set forth above. If the City and CBAH mutually agree to change the nature or scope of CBAH's representation, the City and CBAH will either enter into a new retainer agreement or will amend this one in writing. The City acknowledges that the fees, costs, and results of any matter are inherently uncertain, and neither I nor CBAH has made any promise or guarantee, express or implied, with respect to the total fees, costs, success, or outcome of the subject matters.

CBAH's representation of the City may be terminated by the City or by CBAH at any time. If CBAH wishes to withdraw from representation of the City for any reason, it will advise the City in writing, and the City will not unreasonably withhold its consent for CBAH to withdraw. If the City wishes to terminate CBAH's representation of the City, it will advise CBAH in writing. In the event of termination of CBAH's representation of the City, CBAH will send the City a final statement of fees and expenses and return to the City any balance in its account, adjusted for work undertaken and costs advanced through the date of termination.

In accordance with Part 137 of the Rules of the Chief Administrator of the Courts, the City has the right to request arbitration of any dispute regarding fees charged by CBAH where the fees in dispute are between \$1,000 and \$50,000. If such a dispute arises, which cannot be resolved by mutual agreement, CBAH will send the City a written "Notice of Client's Right to Arbitrate," as provided under Part 137.

If the City desires to retain CBAH for the subject matters set forth above, and upon the terms of this retainer letter, I ask that the City Manager/Acting City Manager, under the authorization of the City Council, ( 1) confirm this agreement by printing his or her name and title (e.g., City Manager/Acting City Manager) and placing his or her signature and the date of such signature on the appropriate lines following my signature on a copy of this retainer letter; and (2) return the signed copy of this letter to me. This agreement, upon execution, shall be deemed effective between January 1, 2023 and December 31, 2023 and to cover all work undertaken and costs incurred between such dates.

We thank the City for choosing CBAH to represent it in connection with the subject matters related to the Project, and we look forward to working with the City, its

The City of Long Beach  
March 21, 2023  
Page 6 of 6

corporation counsel, and officials. If you have any questions, do not hesitate to contact me.

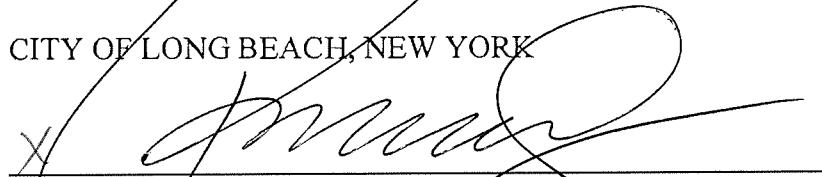
Very truly yours,



John M. Wagner

The undersigned approves and authorizes the representation and fee agreements set forth in this letter.

CITY OF LONG BEACH, NEW YORK



X Ronald J. Walsh, Jr., Acting City Manager

Dated: April 5, 2023