

PROPOSED AGENDA – Special Meeting
LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT FOUNDATION
June 12, 2023

DATE: Monday, June 12, 2023
TIME: 12:00 p.m. to 1:30 p.m.
PLACE: Via Zoom Meeting

Join Zoom Meeting

<https://us06web.zoom.us/j/89710739652?pwd=RC9pK3AyUzhBZFBNZlQxUUhVTmlJZz09>

Meeting ID: 897 1073 9652 - Passcode: 552146

Roll Call

I. **Public Comment**

Topics raised under this item must be limited to matters on today's Agenda. Persons wishing to speak in public comment must sign in on the sign-in sheet before this item is addressed.

The public comment period at Library Foundation board meetings shall be limited to a maximum of forty-five (45) minutes for both periods of public comment. Remarks by speakers during the public comment period shall be limited to three (3) minutes each. A speaker may not transfer time to another speaker, although the chair has the authority to grant additional time to a speaker. When more than fifteen (15) people wish to comment, the chair shall proportionately reduce the time allotted to the forty-five-minute maximum.

II. **Board action to accept Proposed Agenda.**

III. **Discussion and possible action regarding proposed nominations and election of Foundation Directors to serve as Chair, President, Secretary, and Treasurer.**

a. **Election of Officers and Directors**

Per the By-Laws of the Las Vegas-Clark County Library District Foundation, all officers shall serve until the next annual meeting of the Board and until their respective successors are elected and qualified.

Article IV - Officers

Section 1. Titles.

The officers of the Foundation shall be (i) a Chair, (ii) a President, (iii) a Secretary, and (iv) a Treasurer. The officers of the Foundation may include (i) a Vice-Chair, (ii) a Past Chair or (iii) such other officers as may be deemed necessary or desirable by the Board of Directors. Other than the office of President, one individual may hold more than one office at a time. Officers of the

Foundation shall be Directors; provided that Directors concurrently serving on the Las Vegas-Clark County Library District Board of Trustees may not serve as officers of the Foundation.

Section 2. Election and Term of Office.

The officers of the Foundation shall be elected by the Board of Directors at the annual meeting, after the election of Directors, and shall take office immediately. Officer nominees and recommendations for Officer nominees may be submitted in writing by Directors, or by officers or staff of the Foundation, to the Nominating Committee of the Foundation or, if the Foundation does not have a Nominating Committee, to the Chair of the Foundation. If the Foundation has a Nominating Committee, such committee shall, or if the Foundation does not have a Nominating Committee, the Chair of the Foundation shall, after giving due consideration to such recommendations and such other persons as it may wish to consider, present its proposed nominees to the Board of Directors, and the Board of Directors shall vote on each nominee.

The term of office for each officer shall be one year, provided that each officer shall hold office until his or her successor shall have been duly elected and qualified, or until his or her earlier death, resignation, retirement, disqualification, or removal. If the election of any officer is not held at an annual meeting of the Board of Directors, such election shall be held as soon as conveniently possible thereafter. New offices may be created and filled, and vacancies may be filled, at any meeting of the Board of Directors. Each officer shall serve at the pleasure of the Board of Directors.

The Board of Directors shall prescribe each officer's duties, fix such officer's compensation, and may require from such officer a security or a fidelity bond for faithful performance of the duties to be prescribed for such officer to the extent deemed reasonably necessary by the Board of Directors.

- Discussion and possible action to elect a Foundation Chair
- Discussion and possible action to elect Foundation President
- Discussion and possible action to elect a Foundation Secretary
- Discussion and possible action to elect Foundation Treasurer

DIRECTORS	2020	2021	2022	2023	2024	2025
Kelly Benevidez	X	X	X	June Term Exp		
Elaine Sanchez	X	X	x	June Term Exp		
Chris Way	X	x	x	June Term Exp		
Keiba Crear	X	X	X	June Term Exp		
Jane Mac	X	X	X	June Term Exp		
Nicole Rogers	X	X	X	June Term Exp		
Felipe Ortiz		X	X		March Term Exp	
Tamar Hoapili	X	X	X			June Term Exp
Fred James			X			June Term Exp
Michelle Sanders			X			June Term Exp

Shannon Bilbray-Axelrod				X		June Term Exp
Pamela Graham				X		June Term Exp
Kate Turner Whitley				X		June Term Exp

- IV. Presentation from Kutak Rock, LLP re: legal services for New Markets Tax Credit Project for West Las Vegas Library.
- V. Discussion and possible action to approve Kutak Rock, LLC's proposal for legal services re: New Markets Tax Credit Project for West Las Vegas Library
- VI. Public Comment

Topics raised under this item cannot be acted upon until the notice provisions of the open meeting law have been met. Persons wishing to speak in public comment must sign in on the sign-in sheet before this item is addressed.

VII. Adjournment

NOTE: AT ANY TIME, ANY ITEM ON THIS AGENDA MAY BE TAKEN OUT OF ORDER, COMBINED WITH ONE OR MORE OTHER ITEMS ON THE AGENDA OR REMOVED FROM THE AGENDA, EITHER AT THE DISCRETION OF THE CHAIR OR BY VOTE OF THE BOARD.

NOTE: REASONABLE EFFORTS WILL BE MADE TO ASSIST AND ACCOMMODATE PERSONS WITH PHYSICAL DISABILITIES DESIRING TO ATTEND THE MEETING. PLEASE CALL LASHEA WEST AT (702) 507-6181 SO THAT ARRANGEMENTS FOR ATTENDANCE MAY BE MADE.

NOTE: PLEASE CONTACT LASHEA WEST AT (702) 507-6181 OR lashea.west@thelibrarydistrict.org TO REQUEST THE SUPPORTING MATERIAL FOR THIS MEETING. SUPPORTING MATERIAL WILL BE MADE AVAILABLE AT THE MEETING LOCATION ON THE DAY OF THE MEETING AFTER 3:00 P.M.

Pursuant to NRS 241.020, written notice of the meeting of the Las Vegas-Clark County Library District Foundation Board of Directors was given on February 16, 2023, i.e., given at least three (3) working days before the meeting, including in the notice the time, place, location and agenda of the meeting:

- A. By delivering a copy of the notice to each Foundation Board Member;
- B. By posting a copy of the notice at the principal office of the Foundation, or if there is no principal office, at the building in which the meeting is to be held, and at least three other separate, prominent places within the jurisdiction of the Foundation, to wit:
 - 1. Clark County Library
 1401 E. Flamingo Road

Las Vegas, NV 89119

2. Enterprise Library
8310 S. Las Vegas Blvd.
Las Vegas, NV 89123
 3. West Charleston Library
6301 W. Charleston Boulevard
Las Vegas, NV 89146
 4. Windmill Library
7060 W. Windmill Lane
Las Vegas, NV 89113
 5. Las Vegas-Clark County Library District Foundation website
www.lvccldfoundation.org
 6. Nevada Public Notice Website: <https://notice.nv.gov/>
- C. By mailing a copy of the notice to each person, if any, who has requested notice of the meetings of the Las Vegas-Clark County Library District Foundation Board of Directors in the same manner in which notice is requested to be mailed to a member of the Library District Foundation Board of Directors.
- D. Next Meeting Dates:
- August 17, 2023
 - November 16, 2023

May 18, 2023

VIA E-MAIL

Elaine Sanchez
President
Las Vegas-Clark County Library District Foundation, Inc.
7060 W. Windmill Lane
Las Vegas, Nevada 89113

Re: Las Vegas-Clark County Library District Foundation, Inc. - New Markets Tax
Credit Project – West Las Vegas Library

Dear Ms. Sanchez:

The purpose of this letter is to set forth our understanding concerning the engagement of Kutak Rock LLP (the “Firm”) by the Las Vegas-Clark County Library District Foundation, Inc. (the “Foundation”), the Las Vegas-Clark County Library District (“Library District”), and a yet-to-be-formed nonprofit support organization (the “QALICB”, and collectively with the Foundation and the Library District, the “Client”) in connection with the review, structuring, and documentation associated with a proposed new markets tax credit financing for the construction of the West Las Vegas Library facility located near the intersection of N. M.L.K. Blvd. and Mt Mariah Dr. in Las Vegas, Nevada (the “Transaction”). It is anticipated that the new markets tax credit financing will be coordinated utilizing federal new markets tax credits with a national banking association (“Bank”) as the tax credit investor and one or more community development lenders (the “CDEs”).

It is presently contemplated that the Firm will be involved as the Client’s special tax credit counsel in the preparation, negotiation, review and revision of the documentation evidencing the Transaction and the coordination of the closing of the financing, which includes, but is not limited to the following:

- (i) review of financing structure;
- (ii) review of new markets tax credit allocation documents and term sheets prepared by the Bank and the CDEs and their counsel;

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(iii) formation of the QALICB and preparation and submission to the Internal Revenue Service of an application for a determination of 501(c)(3) support organization status for such affiliate;

(iv) coordination with the Client's general and local counsel, staff and finance personnel with respect to the preparation of resolutions, certificates and other documentation on behalf of the Client for the closing of the various loans associated with the Transaction;

(v) preparation of a tax opinion covering the status of the QALICB as a "qualified low-income community business" and any additional tax opinions required;

(vi) coordination with Client's general or local counsel and/or staff with respect to federal and state law opinions;

(vii) negotiation of documents evidencing the potential exit of Bank and the CDEs from the Transaction;

(viii) modification and consultation regarding corporate documents for the QALICB and the Foundation which will act as a "qualified low-income community business" or "leverage lender" in the Transaction;

(ix) review and negotiation of the upper-tier loan documents by and among the leverage lender and the leverage fund on behalf of the Foundation;

(x) review and negotiation of QLICI loan documents and guaranties on behalf of the QALICB and

(xi) review and/or preparation of applicable real estate and other construction and ancillary development documents.

In addition, the Firm will undertake structuring discussions and negotiations on the Client's behalf with the other parties to the Transaction, provide advice regarding the structuring of the fee arrangements with respect to the Transaction and perform standard due diligence activities required to provide the tax and local law opinions. For purposes of this engagement, the Client agrees that our initial primary points of contact for this transaction shall be Floresto Cabais for the Library District and Fred James for the Foundation and that we may rely on directions from these points of contacts as the directions of their respective organizations.

Our fee for the services outlined in this engagement letter will be based on our attorney hourly rates as reflected on the schedule attached hereto as Exhibit A (reflecting the attorneys most likely to work on the Transaction, although other attorneys may also be used) plus actual out of pocket expenses and costs surrounding the issuance of a tax opinion on behalf of the Client. We

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anticipate that the total estimated amount of fees for our legal services to be approximately \$110,000 (however, we note that this amount is an estimate based upon current information provided to the Firm and thus we may request changes to this fee estimate if further facts arise which warrant discussions). Compensation for our services will be payable by the Client at closing or in the event that the Transaction does not close prior to January 31, 2024, within thirty days of such date and with monthly billings thereafter.

As noted above, we expect that our fee for the services outlined in this engagement letter will not exceed \$110,000 plus out of pocket expenses. We will not exceed these amounts without providing you prior notice and without your prior approval.

The Foundation may terminate this agreement with respect to our engagement by notifying the Firm in writing. The Firm's current fees and other amounts described herein will be payable upon such termination.

As a condition of entering into this engagement, the Foundation and the Library District will be required to sign agreements acknowledging in which capacity the Firm represents the various Client entities in each aspect of the transaction. These agreements will be provided separately.

If the above sets forth our understanding to your satisfaction, please confirm your agreement to the terms of our engagement by signing, dating, and returning the enclosed copy of this letter.

We look forward to working with you on the Transaction. Throughout our representation, we want you to be satisfied with the professional services we perform on behalf of the Client. Accordingly, we respectfully invite your inquiry if you have any questions concerning any aspect of our representation in the Transaction described in this letter.

This engagement letter is subject to Exhibit B hereto and shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

This letter may be executed in counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which shall constitute one and the same instrument.

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Sincerely,

KUTAK ROCK LLP

Barry A. Burns, Partner

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ACCEPTED AND APPROVED:

**LAS VEGAS-CLARK COUNTY LIBRARY
DISTRICT FOUNDATION, INC.**

By _____
Elaine Sanchez, President

Date: _____

EXHIBIT A

ATTORNEY RATES—2023

<u>Partners</u>	<u>2023 Rate</u>
Barry Burns, Denver, Colorado Office	\$500
Judd Larson, Denver, Colorado Office	\$355
<u>Associates</u>	
Benjamin Jones, Denver, Colorado Office	\$260
Hunter Maude, Denver, Colorado Office	\$235

EXHIBIT B

TERMS OF REPRESENTATION

Kutak Rock LLP is pleased to have this opportunity to serve you. Our goal is to provide you quality legal services on a prompt, efficient basis. We believe that our relationship will be stronger and more effective when there is a clear understanding of the services we will perform, the fees we intend to charge for such services, and the payment thereof. Therefore, it is our standard procedure to be specific with our clients as to the scope of the services that we intend to provide and the terms by which we will bill fees and expenses. The letter accompanying these Terms of Representation sets forth that information. If what is set forth in the accompanying letter or in these Terms of Representation does not accurately describe your understanding of the services we are to perform or the terms for billing fees and expenses, please advise the attorney sending you the letter. Unless the attorney sending the engagement letter to you is notified promptly, we will assume that these Terms of Representation and the accompanying letter are acceptable to you.

Scope of Representation. *The scope of our representation will be limited to providing only those services that are described in the accompanying letter. Unless otherwise noted, we will render those legal services that are necessary to the representation. No other services are intended to be provided without the mutual agreement of you, as our client, and Kutak Rock LLP. Later, if you determine to change materially the scope of our representation, we will need to document that in additional correspondence.*

Attorney-Client Privilege. *Our statements may contain information protected by the attorney-client privilege. As the privilege could be deemed waived if someone other than the client sees the privileged material, we recommend that you keep our statements, as well as other letters and communications from us, in a separate file marked "Attorney-Client Privileged Materials" and keep the file in a secure place. Your communications with us are legally protected by the attorney-client privilege. In addition, we will treat your matter as confidential, and we will not (unless you specifically grant us the authority to do so) discuss or otherwise make available to anyone, including other clients, any information about you, your business or our work on your behalf.*

Termination of Services and Representation. *You may terminate our services at any time. Termination of our representation does not, however, relieve you from the responsibility of paying those fees and expenses incurred through the date we are notified of such termination. Similarly, we may withdraw from this representation for reasons including your failure to timely pay our statements; failure to disclose all facts material to our representation; failure to act in accordance with our advice; or development of one or more circumstances which, in our judgment, impair our ability to maintain an effective attorney-client relationship.*

Completion of Matter. After a particular matter is completed, we do not (unless you specifically request in writing that we do so) undertake to continue to review that matter and update you concerning legal developments, such as changes in applicable laws or regulations. If you do ask us to review a specific matter on which we have previously worked, we will consider that to be a new representation. Thus, while we may, from time to time, call to your attention issues or legal developments that might be relevant to your operations, we are not undertaking to do so as a part of this representation. Unless otherwise terminated, our representation will end upon our sending you our final statement for services rendered with respect to this matter.

Document Retention. If, upon termination or completion of a matter, you wish to have your documents in our possession delivered to you, please advise us. Otherwise, all such documents will be stored for a reasonable amount of time and will thereafter be destroyed in accordance with our established policy.

No Guarantee. We will perform our professional services on your behalf to the best of our ability, but we cannot make and have not made any guarantees regarding the outcome of our work on your matters. Any expressions by us about the outcome of your matters are our best professional views only and are limited by our factual knowledge at the time they are expressed.

We hope this explanation is helpful to you, and we invite you to discuss any concern with us at any time or to enquire at any time about the fees or costs incurred. It is extremely important that we proceed so that you and we have a clear and satisfactory understanding about the work to be performed. We will strive to keep you fully informed during the course of this engagement and anticipate that you, likewise, will keep us informed of pertinent developments. We trust that you will find that we are not only available and responsive but that we will work diligently to meet your needs and deadlines.

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VIA E-MAIL

Las Vegas-Clark County Library District Foundation, Inc.
7060 W. Windmill Lane
Las Vegas, Nevada 89113
Attention: Elaine Sanchez

Re: ***Waiver of Potential Conflict of Interest – West Las Vegas Library New Markets Tax Credit Transaction***

Dear Ms. Sanchez:

Las Vegas-Clark County Library District Foundation, Inc. (the “Foundation”) has asked Kutak Rock LLP (“Kutak Rock”) to represent the Foundation, Las Vegas-Clark County Library District (the “Library District”), and a yet-to-be-formed nonprofit support organization (the “QALICB”) in connection with the review, structuring, and documentation associated with a proposed new markets tax credit (“NMTC”) financing for the construction of the West Las Vegas Library facility located near the intersection of N. M.L.K. Blvd. and Mt Mariah Dr. in Las Vegas, Nevada (the “Transaction”). In connection with the Transaction, the Foundation will need to make a loan to an investment fund (the “Leverage Loan”). Additionally, the Library District will need to enter into certain agreements related to unwinding of the Transaction and the exit of the tax credit investor from the Transaction after the seven-year NMTC compliance period has ended (the “Unwind Documents”). To facilitate the transaction, the owner of the land on which the West Las Vegas Library facility will be built, will sell or transfer the land to the QALICB (the “Real Estate Transfer”). Also, in connection with the Transaction, one or more community development entities will make qualified low-income community investment loans to the QALICB (the “QLICI Loans”) and the QALICB will enter into a lease with the Library District (the “Lease”). Although the interests of the Foundation, the Library District, and the QALICB are generally aligned in the Transaction, we believe it is in the best interests of all parties that we clarify whose interests will take priority in each aspect of the Transaction. With respect to the Leverage Loan and all documents and issues related thereto, the interests of the Foundation shall have priority. For any documents and issues related to the Unwind Documents and the Lease, the interests of the Library District shall have priority. With respect to all documents and issues related to the Real Estate Transfer and the QLICI Loans, the interests of the Library District shall have priority until the

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QALICB is formed, at which time the interests of the QALICB shall have priority. In order that the Firm may represent the Foundation in connection with the Transaction, we have requested a waiver of any actual or prospective conflict of interest arising or resulting from the Kutak Rock's representation of the Foundation in connection with the Transaction on the one hand (the "Foundation Representation"), and the Firm's representation of the Library District and/or the QALICB, on the other hand.

We propose that our firm proceed with the Foundation Representation and that you waive the potential conflict related thereto, subject to the conditions and on the terms set forth below:

1. We will not serve as litigation counsel to the Foundation, the Library District, or the QALICB in connection with any litigation against each other related to the Transaction.

2. If, in the course of our representation of you, our firm determines that it would be unethical or inappropriate to represent the Foundation, the Library District, and the QALICB, our firm would withdraw from representing the Foundation, the Library District, and the QALICB. While based on the facts known to us, we think this unlikely, if it did occur it could involve additional delay, cost, or other inconvenience to you.

If after having considered the matter, you agree to consent to the Foundation Representation and knowingly and voluntarily waive the potential conflicts of interest, then please execute this letter in the space provided below (or provide a confirming e-mail from an authorized person).

Sincerely,

Barry A. Burns

BAB

ACKNOWLEDGED AND AGREED
THIS ___ DAY OF _____, 2023.

LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT FOUNDATION, INC.

By _____
Elaine Sanchez, President