

Commission on Community Investment and Infrastructure

RESOLUTION NO. 6-2013
Adopted March 19, 2013

APPROVING AN AGREEMENT WITH THE CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO TO PROVIDE LEGAL SERVICES TO THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE AND AUTHORIZING THE EXECUTIVE DIRECTOR TO RETAIN COUNSEL FOR PARTICULAR MATTERS

WHEREAS, Prior to its dissolution, the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”), as a local governmental entity separate from the City and County of San Francisco (“City”), had in-house counsel to address its needs for legal representation and services, but the Redevelopment Agency also retained the City Attorney on a case-by-case basis for particular matters involving specialized areas of the law or major projects under the direction of the Mayor’s Office; and

WHEREAS, the City Charter requires the City Attorney to represent all of the City’s boards, commission, departments, officers and employees, in all legal matters and proceedings affecting the City; and

WHEREAS, in 2004, the Redevelopment Agency and the City Attorney entered into a Memorandum of Understanding for the Provision of Legal Counsel Services that established a process for retaining the City Attorney on particular matters and provided standards for addressing potential conflicts of interest where the City Attorney concurrently or jointly represented the City and the Redevelopment Agency (“2004 MOU”); and

WHEREAS, state law dissolved redevelopment agencies on February 1, 2012 and established that the cities or counties that originally created redevelopment agencies were successor agencies and that, as a result of this succession, the City Attorney was required under the City Charter to represent the successor agency because it was part of the City’s organizational structure; and

WHEREAS, subsequent amendments to state law established that successor agencies are legally separate from the cities or counties that originally created redevelopment agencies and that successor agencies can sue and be sued; and

WHEREAS, the City has implemented state law by enacting Ordinance No.215-12 (Oct. 4, 2012), which authorized, among other things, the Successor

Agency to retain, as it deems appropriate, the City Attorney for legal advice and representation; and

WHEREAS, the Office of Community Investment and Infrastructure, as the Successor Agency to the Redevelopment Agency, (“OCII” or “Successor Agency”) wishes to build upon the successful and productive relationship that developed between the City Attorney and Redevelopment Agency under the 2004 MOU and that has continued since dissolution of the Redevelopment Agency; and

WHEREAS, OCII staff and the City Attorney’s office have drafted an Agreement for Providing Legal Counsel between the City Attorney and the Successor Agency that is based on the 2004 MOU and requires that OCII request legal services for a particular project, transaction, case or other activity, that OCII and the City Attorney negotiate and specify a scope of service and budget for the particular legal services, and that billing for the services be submitted and paid in a timely manner (“Agreement”); and

WHEREAS, a potential for a conflict of interest arises when the City Attorney represents OCII because the City Attorney has a duty under the City Charter to represent the City and County of San Francisco (“City”) and OCII is a legally separate entity that can sue and be sued; and

WHEREAS, the circumstances in which the interests of OCII and the City are actually adverse are likely to be very rare, but the Agreement provides a preliminary identification of potential conflicts of interest that may arise in the future and a process for identifying these conflicts when OCII requests City Attorney representation in a particular matter; and

WHEREAS, the Agreement provides that the City Attorney will not represent OCII when an actual conflict arises and that OCII is free to hire substitute counsel of its own choosing; and

WHEREAS, OCII has the authority to retain counsel other than the City Attorney, as it deems appropriate. NOW THEREFORE BE IT

RESOLVED, by the Office of Community Investment and Infrastructure (“OCII”) that the Executive Director is authorized to execute the Agreement for Providing Legal Counsel between the City Attorney and the Successor Agency (“Agreement”), substantially in the form that is attached to this Resolution as Exhibit A, to provide legal advice and representation on any matter affecting OCII; and BE IT FURTHER

RESOLVED, that the Executive Director is authorized to retain, under the Agreement, the City Attorney for particular legal matters after determining the scope of services, budget, and the potential for conflicts of interest; and BE IT FURTHER

RESOLVED, that the Executive Director is authorized to retain legal counsel other than the City Attorney in the event that the Executive Director identifies potential or actual conflicts of interest with the City Attorney's representation of OCII and those conflicts warrant the use of other legal counsel.

Exhibit A: Agreement for providing legal counsel services between the City Attorney for the City and County of San Francisco, and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of March 19, 2013.

Natashe Jones
Commission Secretary

**AGREEMENT
FOR PROVIDING LEGAL COUNSEL SERVICES BETWEEN
THE CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO, AND
THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO**

THIS AGREEMENT (this "Agreement") dated for reference as of March __, 2013, is between the CITY AND COUNTY OF SAN FRANCISCO (the "City"), acting by and through the CITY ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO (the "City Attorney"), and the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO (commonly known as the Office of Community Investment and Infrastructure), a public body corporate and politic established under the Community Redevelopment Law of the State of California (the "Successor Agency"), as amended by Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26") and Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484") (AB 26 and AB 1484, as they may be further amended, are collectively referred to as the "Redevelopment Dissolution Law").

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. In 2004, the Redevelopment Agency of the City and County of San Francisco (the "Redevelopment Agency") and the City Attorney entered into a Memorandum of Understanding for Provision of Legal Counsel Services that the parties subsequently amended to provide for automatic annual extensions unless one of the parties provided a notice to terminate. ("Agency Counsel Agreement"). Under the Agency Counsel Agreement, the Redevelopment Agency retained the City Attorney to provide a variety of as requested legal services, in cooperation with the Redevelopment Agency's in-house General Counsel. The Agency Counsel Agreement described the process by which the Redevelopment Agency could retain the City Attorney for particular legal matters, in coordination with the Redevelopment Agency's General Counsel. The Agency Counsel Agreement also provided the standards for addressing potential conflicts of interest where the City Attorney concurrently or jointly represented the City and the Redevelopment Agency.

B. On February 1, 2012, AB 26 dissolved the Redevelopment Agency and established that the City was the successor agency for purposes of completing the unfulfilled enforceable obligations of the Redevelopment Agency. As a part of City government, the successor agency was represented by the City Attorney.

C. AB 26 placed successor agencies' performance of their duties under the supervision of oversight boards, which are separate from the local legislative bodies and which oversee, among other things, the fiscal management of future successor agency activities regarding the enforceable obligations. In performing their state statutory functions, the oversight boards owe fiduciary responsibilities to the holders of enforceable obligations and the taxing entities entitled

to the distribution of property tax revenues. In March 2012, the City established an oversight board for the Successor Agency (the “Oversight Board”) consistent with the requirements of AB 26.

D. In addition to the duties that AB 26 placed on the Oversight Board, the City delegated to the Oversight Board, by Board of Supervisors Resolution No. 11-12, certain authority and responsibility of the successor agency, namely implementation of three major approved development projects consistent with the enforceable obligations governing them.

E. On March 6, 2012, the Oversight Board selected, by Resolution 1-2012, the City Attorney as its legal counsel and waived any potential conflicts that may arise from the City Attorney’s concurrent representation of the Oversight Board and the City.

F. On June 27, 2012, the Governor approved AB 1484, which became effective immediately and amended, among other things, the organizational structure of successor agencies to redevelopment agencies. AB 1484 established that successor agencies are separate legal entities that have their own name, can be sued, and can sue. All litigation involving a redevelopment agency was automatically transferred to the successor agency, which succeeded to the “organizational status of the former redevelopment agency” subject to the limitations imposed under Redevelopment Dissolution Law. Cal. Health & Safety Code § 34173 (g).

G. The City implemented AB 1484 through the Successor Agency’s adoption of Ordinance No. 215-12 (Oct. 4, 2012), which acknowledged the separate status of the Successor Agency and provided for establishing a Successor Agency Commission (the “Commission”) to act in place of the former commission of the dissolved Redevelopment Agency, subject to the limitations of Redevelopment Dissolution law. The effect of Ordinance No. 215-12 was, in part, to repeal the delegation to the Oversight Board of successor agency authority. Under Ordinance No. 215-12, the Commission, known as the Commission on Community Investment and Infrastructure, was created, and is now functioning, overseeing the activities of the Successor Agency.

H. Ordinance No. 215-12 authorized the Successor Agency to retain, as it deems appropriate, the City Attorney for legal advice and representation.

I. The City Attorney and the Successor Agency wish to work cooperatively to ensure that the Successor Agency is provided with the highest quality and most cost effective and efficient legal services.

J. The City Attorney's Office has extensive expertise in a broad range of the many areas of law affecting the Successor Agency and thus may reduce the Successor Agency's needs to draw upon outside counsel for legal advice and representation. The City Attorney is well positioned to provide these services, at cost effective rates.

K. Under Government Code sections 26520 and 26529, the City Attorney has the authority to render legal services to the Successor Agency and charge for the cost of those services. The City Attorney performed such services on a regular basis for the Redevelopment

Agency, and continues to perform such services for the San Francisco Unified School District, the San Francisco Courts, the San Francisco Transportation Authority, the San Francisco Parking Authority, and a number of other local public entities operating in San Francisco that the City Attorney represents.

L. The City Attorney and the Successor Agency wish to set forth their understanding regarding legal services that the City Attorney will provide to the Successor Agency and procedures for the Successor Agency to pay the cost of those services. Similar to the Agency Counsel Agreement, this Agreement allows the Successor Agency to retain the City Attorney to provide a variety of legal services as requested by the Successor Agency and the Successor Agency expects the City Attorney to provide a wide range of services, but this Agreement does not obligate the Successor Agency to retain the City Attorney for any particular matter.

M. Under the City's Charter, the City Attorney is an independent elected officer whose duty is to represent the City, including all of its boards, commissions, departments, officers and employees, in all legal matters and proceedings affecting the City. As further provided below, the Successor Agency is willing to waive any potential conflicts that may arise as a result of the City Attorney's representation of the City and the City Attorney's concurrent representation of the Successor Agency (including, without limitation, the Oversight Board and the Commission).

ACCORDINGLY, the City Attorney and the Successor Agency agree as follows:

1.0 TERM

1.1 Effective Dates. This Agreement shall be effective beginning on June 27, 2012 (i.e., the effective date of AB 1484), and shall continue through and including June 30, 2013, and shall be automatically renewed for successive 12-month periods, unless and until earlier terminated by either party as set forth under Section 1.2 of this Agreement.

1.2 Early Termination. Either party may terminate this Agreement without cause, with prior written notice as provided below. If either party elects to terminate this Agreement, that party shall give written notice to the other party. The effective date of such termination shall be no earlier than three months from the date of written notice, unless both parties mutually agree in writing to an earlier date. If this Agreement terminates, the Successor Agency shall be responsible for all fees and costs incurred through the effective date of the termination of this Agreement. The City Attorney shall cooperate reasonably in the transfer of documents and information related to any past or then current representation under this Agreement.

2.0 SCOPE OF SERVICES

2.1 Provision of City Attorney Legal Services. Subject to the provisions of Section 7 below relating to potential conflicts, at the request of the Successor Agency, as provided below, the City Attorney will provide legal advice and representation on

any matter affecting the Successor Agency, including, but not limited to, General Counsel services and any matters involving litigation, real estate transactions, public contracting, labor law, workers compensation, land use and environmental law, ethics, public records and public meetings, and general government law. Such services may include training of Successor Agency staff on the law relating to any of the foregoing subjects, such as public works contracting, sexual harassment and workplace discrimination, and government ethics and sunshine laws. The Successor Agency may make such a request for representation by the City Attorney in writing, including, but not limited to, electronic mail format, or orally, in person or by telephone. The Successor Agency's Executive Director, the Commission or any member of the Commission may request that the City Attorney provide services under this Agreement; provided, however, that requests from a member of the Commission shall be related to advice about his or her responsibilities as a Commissioner. That request generally should be made to the Deputy City Attorney assigned by the City Attorney to be the liaison to the Successor Agency, provided that if such deputy is not then available, a request may be made to the Deputy City Attorney who is the head of the Government Team, or a request may, if circumstances so warrant, be made directly to the City Attorney or his Chief Assistant, Chief Deputy, Managing Deputy and Chief Trial Deputy. The Commission, or any member of the Commission, may seek confidential legal advice from the City Attorney on matters related to the Successor Agency, subject to the City Attorney's obligations under Rule 3-600 of the California Rules of Professional Conduct to represent the organizational interests of the Successor Agency. The parties shall confirm, by letter agreement (in hard copy or electronic mail format) the City Attorney's agreement to represent the Successor Agency in a particular matter, provided that failure to do so in any particular matter shall not be a default or cause for terminating this Agreement. The letter agreement will identify the enforceable obligation and/or administrative line item in the Recognized Obligation Payment Schedules that the Successor Agency will use to fund the City Attorney's services. The parties anticipate that most of the work that the City Attorney will perform under this Agreement will be at the request of the Executive Director of the Successor Agency (or designee).

- 2.2 Commencement of Work. As provided in Section 2.1, the City Attorney may begin work under this Agreement on any matter at the written or oral request of the Successor Agency Executive Director (or designee).
- 2.3 City Attorney's Assignment and Supervision of Matters. The management, direction, and supervision of City Attorney legal and support services, standards of performance, and other matters incident to the performance of such services shall remain in the sole discretion of the City Attorney. Services under this Agreement shall be performed by competent personnel under the supervision of the City Attorney. Particular tasks will be performed by lawyers (or, where

appropriate, investigators, paralegals or other staff) with appropriate levels of experience for the performance of such tasks.

- 2.4 Scope of Service and Budget. At the Executive Director or designee's request, prior to the commencement of work, the parties shall describe in writing, the scope of service and an estimated budget for the particular matter for which the Executive Director (or designee) has requested that the City Attorney represent the Successor Agency. If the budget exceeds the expenditure authority of the Executive Director, the Successor Agency Commission shall approve the request for legal representation. The parties understand and agree that any such budget presented by the City Attorney reflects the City Attorney's belief that the estimates of anticipated fees that his Office sets forth in the budget are realistic outside costs based on then current information. But, the parties further understand and agree that due to the uncertainties and complexities involved in any particular project, those estimates are necessarily only an approximation of potential fees, and that they do not constitute a minimum or maximum fee quotation. In particular, a change in the anticipated scope of work could result in an adjustment in fees. The City Attorney will attempt to identify any critical assumptions in the scope of representation in the budget transmittal to the Successor Agency's Executive Director and will also try to apprise the Successor Agency of any significant change in its budget as the matter progresses.
- 2.5 Reporting. In the performance of the services, the City Attorney shall report to, and work in cooperation with, the Successor Agency's Executive Director or her designee, except in any limited instances where the City Attorney is working directly with the Commission or a commissioner and has been specifically requested to do so confidentially, subject to the City Attorney's obligations under Rule 3-600 of the California Rules of Professional Conduct to represent the organizational interests of the Successor Agency.
- 2.6 Dispute Resolution. Operational issues that do not impact funding or service changes shall be resolved by the Successor Agency's Executive Director and the City Attorney's representative. The parties shall meet in good faith to resolve the issue to their mutual satisfaction.

3.0 LEVEL OF SERVICE

The City Attorney agrees to provide service as specified in Section 2.0 of this Agreement. Upon notice to the Successor Agency, the City Attorney reserves the right to reduce the level of service to the level supported by the Successor Agency's budget for City Attorney legal services.

- 3.1 Change in Scope of Service. Significant changes in scope of services for any particular matter shall require the approval of both parties.

4.0 COMPENSATION FOR CITY ATTORNEY'S SERVICES

- 4.1 Billing. The City Attorney will bill the Successor Agency 30 days after the close of each quarter of the City's fiscal year, which begins on July 1 and ends on June 30. The bill will consist of reasonably itemized invoices for services provided by the City Attorney and costs. A bill is reasonably itemized if it contains the following information: a reference to the letter agreement (which will include the applicable enforceable obligation and/or administrative line item on the ROPS; provided, however, that the Successor Agency shall have first identified this information in the letter agreement and thereafter the City Attorney will include the information in a bill) under which the services were authorized, a complete, detailed and accurate description of the tasks that were necessary to provide the authorized services, the date the task was performed, the name of the lawyer or other City Attorney staff who performed the task, and the time spent performing the task. The City Attorney acknowledges that the Redevelopment Dissolution Law requires the Successor Agency to make expenditures consistent with state-approved Recognized Obligation Payment Schedules ("ROPS"), which establish six month fiscal periods for payments. The Successor Agency must receive bills for City Attorney services no later than 30 days after the end of a ROPS period in which the services were provided. If the Successor Agency receives a bill later than 30 days after the end of a ROPS period in which the services were provided, the Agency shall have no obligation to pay the bill within the 30 day period specified under Section 4.3 of this Agreement, but shall pay the bill during the next ROPS period.
- 4.2 Rates. For work that the City Attorney performs under this Agreement, the City Attorney shall bill the Successor Agency at the same rates it normally bills City departments, reflecting the actual costs of services performed by deputies. The hourly billing rates include an appropriate allocation of administrative costs, such as copying and facsimile costs and support staff. The City Attorney reassesses his Office's hourly rate schedules from time to time based on increases in actual costs, generally on an annual basis. Currently, the City Attorney's rates are adjusted effective July 1 of each year, which corresponds with the beginning of the City's fiscal year, but such rates could be adjusted at different times depending on the City's budget requirements.
- 4.3 Payment. The Successor Agency shall pay the City Attorney or cause the City Attorney to be paid within 30 days of receipt of the quarterly bill, unless the City Attorney fails to submit a bill within 30 days of the end of a ROPS period in which services were provided. The Successor Agency will be fully responsible for all costs of services that are provided under letter agreements subject to this Agreement and that are adequately described in bills submitted in a timely fashion to the Successor Agency, but in no event shall the total cost of all services the City Attorney bills to the Successor Agency exceed the amount specified in the letter agreement without written authorization from the Successor Agency. The

parties anticipate that the cost of all fees and services that the City Attorney provides under this Agreement will be paid from revenues in the Real Property Tax Trust Fund established under the Redevelopment Dissolution Law. Notwithstanding the foregoing, certain work that the City Attorney performs may be paid for or reimbursed by the third party developers or other parties under the terms of enforceable obligations. The City Attorney, if informed of reimbursement by such third parties, will bill under a separate matter number for that work at the applicable billing rates provided under those enforceable obligations.

- 4.4 Budget. At the Successor Agency's request, the City Attorney's Office will provide the Successor Agency with an annual budget setting forth the hours and estimate cost that the City Attorney's Office expects to allocate to the Successor Agency for the upcoming services under this Agreement. The parties acknowledge that this budget information is important to the Successor Agency in preparing the ROPS, which covers a six month period. The City Attorney will update that budget upon the Successor Agency's reasonable advance request, in connection with the Successor Agency's preparation of the ROPS.

5.0 AUDITS AND RECORDS

- 5.1 Ability to Conduct. Audits may be conducted by either party to this Agreement, by the Controller's Audits Division, the Successor Agency's Finance Division, the State Controller, the Department of Finance or by any other parties authorized by law or mutually agreed upon by both parties. The costs of the audit will be the responsibility of the requesting party.
- 5.2 City Attorney. The City Attorney shall make available to the Successor Agency upon request all personnel time records, contractual records, and other records used to justify reimbursement within a reasonable period of time, not to exceed 30 days from the date the City Attorney receives a written request.

6.0 NOTICES

- 6.1 General. Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the parties required or permitted under this Agreement shall be in writing and shall be deemed given and effective (i) upon the date of receipt if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) upon the next business day if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt of delivery, or (iii) if mailed, three business days after deposit with the U.S. Postal Service for delivery by United States registered or certified mail, first class postage prepaid, to the party at their respective addresses for notice designated below. For convenience of the parties, copies of notices may

also be given by facsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; however, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

6.2 Addresses. Notices shall be addressed as follows:

In the case of a notice or communication to the Successor Agency:

Successor Agency to the San Francisco Redevelopment Agency
1 South Van Ness Ave, 5th floor
San Francisco, CA 94103
Attn: Tiffany Bohee, Executive Director
Telefacsimile: (415) 749-2458
Telephone: (415) 749-2525

In the case of a notice or communication to the City:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Marisa Moret, Managing Deputy
Telefacsimile: (415) 554-4715
Telephone: (415) 554-4700

7.0 CONFLICTS

7.1 General. Because the City and the Successor Agency are legally separate entities, conflicts of interest may arise regarding the City Attorney's representation of both entities. For these purposes, a conflict of interest would exist when the City Attorney would be required to take a position on behalf of the City that would be detrimental to the interests of the Successor Agency, or vice versa. At this time, the City Attorney's Office is unaware of any *actual* conflicts of interest arising from the City Attorney's simultaneous representation of the City or the Successor Agency that would render the office's legal representation of either entity less effective than if it were representing just the City or the Successor Agency. But the City Attorney's Office can preliminarily identify *potential* conflicts of interest that may arise in the future. In addition, if unforeseen conflicts arise, the City Attorney's Office would bring them to the attention of the Successor Agency.

The Successor Agency and the City Attorney contemplate that the Successor Agency will engage the City Attorney's services in two types of situations that present the potential for conflicts of interest under the California Rules of Professional Responsibility: 1) concurrent representation; and 2) joint representation. Concurrent representation exists when the City Attorney represents the Successor Agency in a matter and also represents the City in other related or unrelated matters that may involve or affect the Successor Agency. Joint representation exists when the City Attorney represents the Successor Agency and the City in the same matter.

This section sets forth the agreement between the parties that the Successor Agency's decision to engage the City Attorney's services for any particular matter includes: 1) the Successor Agency's consent to the ongoing representation of the City, notwithstanding any conflict of interest; and 2) the Successor Agency's agreement that the Successor Agency will not seek to disqualify the City Attorney's Office or any of its attorneys from representing the Office's primary client, the City, because of any conflict of interest arising out of such concurrent or joint representation.

- 7.2 Nature of Relationship. The Successor Agency and the City share a unique relationship. Although the Successor Agency is a separate legal entity, it exists to perform certain functions exclusively for and by authorization of the City and the territory over which it has jurisdiction is entirely within the City. The Successor Agency was organized by the City under the California Community Redevelopment Law (CCRL), as amended by the Redevelopment Dissolution Law. The Successor Agency operates in certain redevelopment project areas designated by the City's Board of Supervisors. The City and the Successor Agency cooperate in implementing and winding down redevelopment plans and complying with enforceable obligations. The Successor Agency, in collaboration with the City and under surviving enforceable housing obligations, also provides funding for the development of affordable housing in the City. The Successor Agency is governed by a five-member Commission appointed by the Mayor and confirmed by the Board of Supervisors. The City's Controller has certain responsibilities under the Redevelopment Dissolution Law relating to oversight of expenditures by the Successor Agency. The City controls a majority of the appointments to the Oversight Board, which has, under Redevelopment Dissolution Law, fiduciary obligations to the holders of enforceable obligations and taxing entities, including but not limited to the City.

In light of this unique, interdependent, and cooperative relationship, the Successor Agency and the City agree that from time to time their best mutual interests will be served by the City Attorney's Office providing legal services to the City and at the same time also to the Successor Agency on particular matters in accordance with the terms and conditions of this Agreement. While the parties anticipate that circumstances in which the Successor Agency and the City will be adverse will be

rare, in those circumstances the parties intend that where they anticipate such a conflict anticipated in advance, the Successor Agency will retain separate counsel and where they do not anticipate the conflict at the outset, the City Attorney will timely advise the Successor Agency when such a conflict arises and the Successor Agency will retain separate counsel.

7.3 Waiver by the Successor Agency of Conflicts Arising Out of Concurrent Representation.

7.3.1. Charter Responsibilities of City Attorney. The Successor Agency acknowledges that the Charter of the City and County of San Francisco charges the City Attorney with the responsibility to represent the City and County, including all its boards, commissions, departments and officers. Given the nature of the City Attorney's relationship with the City, the City Attorney must preserve its ability to represent the City on matters that may arise in the future, including matters in which the City's interests are adverse to the Successor Agency's interest. The City Attorney is not willing to undertake representation of the Successor Agency in the absence of the Successor Agency's consent as set forth in this section because the City Attorney must preserve the ability to represent the City, as provided in the Charter. The Successor Agency's engagement of the City Attorney with respect to any particular matter includes the Successor Agency's consent to the City Attorney's ongoing representation of the City, in all matters, including transactions and litigation, in which the interests of the City are potentially or actually adverse to the interests of the Successor Agency and notwithstanding that the City Attorney may have obtained confidential information from the Successor Agency, subject to the conditions below.

At the time the Successor Agency engages the City Attorney's services for a particular matter, the City Attorney will inform the Successor Agency based on the available facts of any specific matters in which the City's interests and the Successor Agency's interests are then actually or potentially adverse. Neither the Successor Agency nor the City Attorney intend to provide for the City Attorney's continuing representation of both the Successor Agency and the City in matters where the interests of the Successor Agency and the City are actually adverse, but the parties anticipate that any such instances are likely to be very rare. In the event that an unanticipated actual conflict of interest arises during the course of representation, the City Attorney will promptly inform the Successor Agency that a conflict has arisen, and will discontinue representing the Successor Agency and continue to represent the City, provided that the City Attorney shall not disclose the reasons for the conflict to the Successor Agency if the City client has requested that those reasons remain confidential. The Successor Agency acknowledges that in such a

circumstance it is free to hire substitute counsel of its own choosing and at its own expense.

- 7.3.2 Potential Conflicts. The Successor Agency's decisions could affect a number of City agencies—including the Mayor's Office, the Controller's Office, the Planning Department, the Port Commission, and the Office of Economic and Workforce Development—which the City Attorney represents. It is therefore possible that the interests of the City and the interests of the Successor Agency may diverge regarding particular matters. For example, the Successor Agency may decide to enter into agreements with one or more City agencies, and during the negotiation of those agreements, the City agencies and the Successor Agency could seek different terms. Also, there are preexisting leases between the City and the Successor Agency and other agreements with the City (that the Successor Agency assumed from the former Redevelopment Agency). And the City and the Successor Agency could be in negotiations regarding the interpretation or enforcement of terms and conditions of those agreements and use of funds held by the Successor Agency. Subject to the Successor Agency's consent, the City Attorney could represent both the City agencies and the Successor Agency in those negotiations, providing both, as he does when advising City departments with conflicting policy agendas, with consistent objective legal advice, even though the parties may have different goals and could elect to seek different legal advice.

Also, state law requires the City's Controller to review the Successor Agency's reports to the state on expenditure of funds required by enforceable obligations (including the ROPS) and to perform audits of the Successor Agency's assets and liabilities. In addition, the state could direct the City's Controller to deduct funds from allocations to the Successor Agency. Furthermore, state law imposes on the Oversight Board of the Successor Agency a fiduciary obligation to taxing entities to ensure they receive their share of taxing revenues. The City and the Oversight Board could disagree as to the share of tax revenue owed the City. The Successor Agency and the City's Controller may have differing policy views and seek legal advice from the City Attorney on these matters. Here as well, the City Attorney would provide advice to Agency and the City's Controller regarding the requirements of the state law. Similarly, one or more City agencies could disagree with the Successor Agency's decisions regarding a redevelopment project or other matters (*e.g.*, the Mayor's Office of Housing and the Successor Agency could have differing views as to the more effective way to fulfill housing obligations retained by the Successor Agency that are important to the ability of the City to satisfy affordable housing goals), and the Successor Agency and the City agencies could both seek legal advice from the City Attorney regarding that matter. In these circumstances, the City Attorney again would provide

advice to both the Successor Agency and the City agencies. In each instance of advice to both the Successor Agency and the City, and consistent with its current practice in representing a variety of City agencies, the City Attorney would endeavor to provide consistent, objective legal advice to all affected clients within the Successor Agency and the City.

The Successor Agency acknowledges that its consent to the City Attorney's ongoing representation of the City in matters where the interests of the City and Successor Agency are potentially or actually adverse has significant implications that the Successor Agency has considered. For example, the City Attorney may take positions antagonistic to the Successor Agency, or seek to compel documents or testimony from the Successor Agency, in litigation brought by third parties against the City and the Successor Agency where the City does not represent the Successor Agency. The City Attorney may learn confidential information in the course of representing the Successor Agency that may be relevant to matters in which the interests of the City and Agency become adverse. The Successor Agency acknowledges that the City Attorney will not keep this confidential information from its primary client, the City.

- 7.3.3 Consent to Waiver. By signing this agreement, the Successor Agency acknowledges that it is aware of potential conflicts associated with concurrent representation; that it is aware of the City Attorney's present and continuing relationship with the City; and that the Successor Agency, upon requesting assistance from the City Attorney under this Agreement, and having been presented with the information about potential and actual conflicts of interest as required by this section, provides its consent under Rule 3-310 of the Rules of Professional Conduct to the City Attorney's ongoing representation of the City, notwithstanding any potential or actual conflict of interest between the City and the Successor Agency that exists or may develop.

The Successor Agency waives any and all rights to disqualify the City Attorney from representing the City in any matter based on a conflict of interest arising out of concurrent representation of the City and the Successor Agency. The Successor Agency's consent and waiver extends to "subsequent representation," where by reason of the City's former representation of the Successor Agency in a matter, the City has confidential information material to a matter in which the City's interests are adverse to the Successor Agency's interests, and the City Attorney no longer represents the Successor Agency in any matter.

7.4 Waiver by the Successor Agency of Conflicts Arising Out of Joint Representation and Defense.

As the Successor Agency is aware, the City Attorney's joint representation of the Successor Agency and the City in the same matter, such as on specific City-sponsored redevelopment projects, may create conflicts of interest in that the interests and objectives of each client individually on particular issues are, or may become, inconsistent with the interests and objectives of the other. The Successor Agency acknowledges that the City Attorney's representation of multiple interests in the same matter has significant implications that the Successor Agency has considered. For example, rather than the City Attorney vigorously asserting a single client's interest on an issue, there likely will be a balancing of interests between the parties represented. Terms that are advantageous to one party are typically disadvantageous to the other party. Further, in the event of a significant legal dispute between the Successor Agency and the City over such a matter or a matter in which their interests become actually adverse with regard to such a matter, the City Attorney's office will advise the Successor Agency of the Successor Agency's need to retain outside counsel and the Successor Agency would need to procure substitute counsel at its expense for such a matter. There are additional issues resulting from joint representation. Under California Evidence Code section 962 and California case law, there is no attorney-client privilege between or among clients who are jointly represented in a matter so that joint representation may result in a waiver of the attorney-client privilege with respect to the other client.

The attorney-client privilege will not apply between the Successor Agency and the City on matters of common interest, *i.e.*, regarding matters as to which the Successor Agency and the City jointly consulted the lawyer and as to which they are united in interest. But consistent with its longstanding practice in representing City boards, commissions, departments and officials, the City Attorney would upon request maintain the confidences of one party with regard to the other party, to the extent appropriate and practicable. Notwithstanding this limitation on the attorney-client privilege between the Successor Agency and the City (including representatives of either), the privilege would continue to apply to other entities and persons.

During the course of its joint representation of the City and the Successor Agency, the City Attorney's Office would inform the Successor Agency of any specific matters in which the City Attorney's Office learns that the City's interests and the Successor Agency's interest are actually or potentially adverse. The City Attorney's Office would, as the need arises from time to time, update the Successor Agency of potential or actual conflicts, and as appropriate, seek a further waiver of any such conflicts of interest.

By signing this Agreement the Successor Agency acknowledges that it has been advised of the potential conflicts associated with joint representation; that it has been advised of the City Attorney's present and continuing relationship with the City; and that the Successor Agency, upon requesting assistance from the City Attorney on a particular matter in which the City Attorney also represents the City, nevertheless wants the City Attorney to represent both the Successor Agency and the City in connection with such a matter. By signing this Agreement, the Successor Agency provides its consent under Rule 3-310 of the California Rules of Professional Conduct, agrees to the terms and conditions set forth in this Section, and waives any and all rights to disqualify the City Attorney from representing the City because of any conflict of interest arising out of the joint representation of the City and the Successor Agency. The Successor Agency acknowledges that it may hire substitute counsel at its own expense, subject to the Redevelopment Dissolution Law, at any time for any particular matter.

- 7.5 Consultation with independent counsel. By signing this Agreement, the Successor Agency acknowledges that the Successor Agency has been advised to consult with its own counsel, has had an opportunity to do so, and consulted with its own counsel before signing this Agreement.
- 7.6 Survival. The waivers contained in this section shall survive any termination of this Agreement.

8.0 GENERAL PROVISIONS

- 8.1 Amendments. No addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement, which is approved and executed by both parties.
- 8.2 Entire Agreement. This Agreement is intended by the parties to be a final expression of their understanding with respect to the subject matter and as a complete and exclusive statement of the terms and conditions and supersedes any and all prior agreements and understandings, oral or written, in connection with this Agreement.
- 8.3 Approvals. Any approval that this Agreement requires or permits the Successor Agency to give may be given by the Executive Director or her designee. Any approval that this Agreement requires or permits the City Attorney to give may be given by the City Attorney, the Chief Assistant, the Chief Deputy, or the Managing Deputy.
- 8.4 Governing Law. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation

relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

- 8.5 Self-Insurance. The Agency acknowledges and agrees that the City self-insures and does not – and will not – have any obligation to obtain or maintain any professional liability coverage or other insurance coverage relating to the City Attorney's performing services under this Agreement.
- 8.6 Survival. Termination, expiration or cancellation of this Agreement shall not affect any provision of this Agreement that states it shall survive termination, expiration or cancellation thereof.
- 8.7 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

CITY ATTORNEY

Dennis J. Herrera

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

By _____

Tiffany Bohee, Executive Director

Approved by Successor Agency Commission
Resolution No. 6-2013 _____