MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Authorizing a First Amendment to the Legal Services Contract with Carr McClellan P.C., formerly known as Carr McClellan Ingersoll Thompson & Horn A Professional Corporation, to increase the contract amount by $25,000 for a total aggregate contract amount not to exceed $100,000, to provide bankruptcy-related legal services on an as-needed basis

EXECUTIVE SUMMARY

On July 1, 2014, Office of Community Investment and Infrastructure ("OCII") entered into a legal services contract with Carr McClellan P.C., formerly known as Carr McClellan Ingersoll Thompson & Horn A Professional Corporation ("Outside Counsel"), to provide bankruptcy-related legal services (the "Contract"). The Office of Community Investment and Infrastructure ("OCII or the "Successor Agency") has a need for bankruptcy-related legal services, given the specialized nature of the federal bankruptcy process.

To date, Outside Counsel has been paid $75,000 under the Contract, which was the allowable budget under the Contract. This money was spent assisting OCII with three bankruptcy cases in former redevelopment project areas.

Staff wishes to amend the Contract to increase the budget allowable under the Contract by $25,000, for a total aggregate contract amount of $100,000 (the "First Amendment"). This budget increase is requested because Outside Counsel is owed for work already performed under the Contract. In addition, OCII currently needs additional bankruptcy-related legal services and will likely need more in the future. For these reasons, staff is requesting approval of the First Amendment. All other terms of the Contract remain the same.

Staff recommends approval of the First Amendment to the Contract with Outside Counsel.

BACKGROUND

Before the former Redevelopment Agency of the City and County of San Francisco (the "SFRA") was dissolved, two bankruptcy cases associated with SFRA tenants and/or borrowers were underway. One involved Agonafer Shiferaw, the former owner and operator of Rasselas jazz club on Fillmore Street (the "Rasselas BK"), and the other involved Benito Solis, owner and operator of Carmen's restaurant on Piers 38/40 (the "Carmen's BK"). The Rasselas BK (a
Chapter 11 filing) began in February 2011 and the Carmen’s BK (a Chapter 13 filing) began in December 2011.

On February 1, 2012, the SFRA was dissolved and its successor entity became part of the City and County of San Francisco (the “City”) pursuant to California Assembly Bill 26 (“AB 26”) and the California Supreme Court’s decision and order in the case entitled California Redevelopment Association et al. v. Ana Matosantos. In anticipation of dissolution, the City, acting by and through the City Attorney’s Office (the “City Attorney”), hired Outside Counsel in January 2012 under the City Attorney’s authority granted under the San Francisco Municipal Code, 1996 Charter (the “City Contract”). Because at that time the successor entity to the SFRA and the City were the same entity, the successor entity to the SFRA also used Outside Counsel under the City Contract in both the Rasselas BK and the Carmen’s BK.

About four months later, in June 2012, the California State Legislature passed a follow-up bill to AB 26, commonly called AB 1484 (together with AB 26 and subsequent legislation, “Redevelopment Dissolution Law”). Under AB 1484, the successor entity to the SFRA became a separate legal entity, separate from the City. The successor entity to the SFRA, now known as OCII, continued to use Outside Counsel for its bankruptcy-related needs under the City Contract.

Then, in November 2012, another OCII borrower began bankruptcy proceedings. Creditors of Yoshi’s San Francisco (“Yoshi’s SF”) submitted an involuntary bankruptcy filing to the bankruptcy court, stating that Yoshi’s SF should be in Chapter 11 bankruptcy (the “Yoshi’s BK”). (Due to protracted settlement discussions, the federal bankruptcy judge did not formally put Yoshi’s SF into Chapter 11 bankruptcy until January 2014.)

DISCUSSION

Due to these ongoing bankruptcy matters, OCII entered into the Contract with Outside Counsel on July 1, 2014. The Contract runs until bankruptcy-related legal services are completed up to an aggregate contract amount of $75,000.

Outside Counsel was awarded this Contract under the “sole source method” because the firm had been representing the City and the Successor Agency in these bankruptcy-related matters since January 2012 and had “performed satisfactorily and gained specific information and experience” making Outside Counsel “uniquely qualified” to provide the needed bankruptcy-related legal services (See Section IX.D.1.d of the Successor Agency’s Purchasing Policy).

To date, Outside Counsel has been paid $75,000 under the Contract. This money was spent assisting the Successor Agency with the Yoshi’s BK, the Rasselas BK, and the Carmen’s BK.

Under the proposed First Amendment, the maximum allowable budget under the Contract would be increased by $25,000, for a total aggregate Contract amount of $100,000. The increase in budget is needed because Outside Counsel is owed about $1,700 for work already performed under the Contract. In addition, OCII currently needs additional bankruptcy-related legal services and will likely need more in the future.
During the 2014-15 fiscal year, OCII will pay the cost of this Contract with loan repayment funds approved for non-personnel operating expenses under OCII’s Recognized Obligations Payment Schedule (ROPS Line #4), or other eligible funds if necessary.

Outside Counsel complies with OCII’s Equal Benefits, Minimum Compensation, and Healthcare Accountability Policies. All other terms of the Contract remain the same.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

Authorization of the First Amendment to the Contract will result in bankruptcy-related legal services being provided to the Successor Agency. The activities under the proposed First Amendment are categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301(h) and 15061(b)(3). The services would not directly cause any significant adverse change in the physical environment.

STAFF RECOMMENDATION

Staff recommends approval of the proposed First Amendment to the Contract with Outside Counsel.

*(Originated by Tracie Reynolds, Manager, Real Estate and Development Services)*

[Signature]

Tiffany Bohee
Executive Director

Exhibit A: Proposed First Amendment
Exhibit A
Proposed First Amendment
OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE  
(SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY)

FIRST AMENDMENT TO LEGAL SERVICES CONTRACT

This First Amendment to the Legal Services Contract (the “First Amendment”) is entered into as of _________, 2014 (the “Effective Date”), by and between the Office of Community Investment and Infrastructure (“OCI”) or the “Successor Agency”), the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, and Carr McClellan P.C., formerly known as Carr McClellan Ingersoll Thompson & Horn A Professional Corporation (“Outside Counsel”).

RECITALS

This First Amendment is made with reference to the following facts and circumstances:

A. On July 1, 2014, the Successor Agency entered into a legal services contract with Outside Counsel to continue to provide bankruptcy-related legal services related to an involuntary bankruptcy filing associated with Yoshi’s San Francisco (the “Yoshi’s BK”) (the “Contract”).

B. To date, Outside Counsel has been paid $75,000 under the Contract. Outside Counsel is owed an additional $1,176 under the Contract for work already performed related to the Yoshi’s BK. Outside Counsel is also owed an additional $552.00 for work already performed related to a separate bankruptcy case associated with Agonafer Shiferaw, the former owner and operator of Rasselas jazz club on Fillmore Street (the “Rasselas BK”).

C. OCI continues to have a need for bankruptcy-related legal services, given the specialized nature of the federal bankruptcy process. The Successor Agency requires bankruptcy expertise for OCI to have adequate legal representation in these matters.

D. Therefore, staff wishes to amend the Contract to increase the Contract budget by $25,000. All other terms of the Contract shall remain the same.

E. Outside Counsel is ready, willing, and able to provide the bankruptcy-related legal services contemplated by this First Amendment.

F. This First Amendment continues an on-going attorney-client relationship between the Outside Counsel and the Successor Agency, which is a separate public entity from the City and County of San Francisco. The attorney-client relationship shall remain in place at all times from the effective date of this First Amendment until such time as either party provides written notice of its intent to terminate the attorney-client relationship. The attorney-client relationship will remain in place continuously under this First Amendment until such notice is provided, regardless of whether Outside Counsel is actively performing legal work for OCI.
AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Successor Agency and Outside Counsel agree as follows:

1. Subsection A of Section 3, COMPENSATION, PERSONNEL AND BILLING RATES, shall be deleted and replaced in its entirety to read as follows:

   "A. Maximum Amount Payable. The maximum amount payable under this Contract is no more than ONE HUNDRED THOUSAND DOLLARS ($100,000) (the “Contract Amount”), which constitutes $75,000 awarded under the Contract and an additional $25,000 awarded under the First Amendment to the Contract. Outside Counsel shall notify the Agency Executive Director before the Contract Amount is reached as to whether this Contract should be amended to increase the Contract Amount.”

2. The following Miscellaneous provisions apply to this First Amendment:
   a. Incorporation. This First Amendment constitutes a part of the Contract and any reference in any document to the Contract shall be deemed to include a reference to such Contract as amended hereby.
   b. Ratification. To the extent of any inconsistency between this First Amendment and the Contract, the provisions contained in this First Amendment shall control. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Contract shall remain in full force and effect.
   c. Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the successors and assigns of the OCII and Outside Counsel, subject to the limitations set forth in the Contract.
   d. Counterparts. This First Amendment may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.
   e. Governing Law; Venue. This First Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this First Amendment shall be litigated in courts located with the County of San Francisco, State of California.
   f. Integration. This First Amendment contains the entire agreement between the parties with respect to the subject matter of this First Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this First Amendment. No prior drafts of this First Amendment or changes from those drafts to the executed version of this First Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this First Amendment.
   g. Effective Date. Each of the modifications set forth in Section 1 of this First Amendment shall be effective on and after the Effective Date of this First Amendment.
IN WITNESS WHEREOF, the Successor Agency and Outside Counsel have executed this First Amendment to the Contract as of the date first written above.

OUTSIDE COUNSEL: CARR MCCLELLAN P.C.

By: ______________________________
Its: ______________________________
Federal Tax ID No:

SUCCESSOR AGENCY: OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, the 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

Authorized by Agency Resolution No. ___-2014 adopted on ________, 2014

APPROVED AS TO FORM:

By: ______________________________
James Morales
Interim General Counsel