MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: 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

EXECUTIVE SUMMARY

The Office of Community Investment and Infrastructure ("OCII") needs legal services in implementing its responsibilities as the Successor Agency to the San Francisco Redevelopment Agency. These services may relate to variety of issues, including 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. OCII and the City Attorney have drafted a proposed agreement on the framework whereby OCII would be able to retain, as needed, attorneys in the City Attorney's office for particular projects and cases ("Agreement"). The Agreement provides that the OCII Executive Director may request legal representation from the City Attorney on a particular matter, negotiate a proposed scope of services and budget for the representation, and waive potential conflicts that may arise in the course of the City Attorney's representation of the City. The Agreement retains the authority of OCII to select other counsel for a particular matter, especially where a potential conflict has been identified.

Staff recommends approval of the agreement with the City Attorney for legal services and of the authorization for the Executive Director to retain counsel for particular matters.

DISCUSSION

Prior to its dissolution, the San Francisco Redevelopment Agency ("Redevelopment Agency") had in-house attorneys that provided legal services on a wide variety of issues. These services were occasionally supplemented with assistance from the City Attorney's office for particular matters involving specialized areas of the law or major projects under the direction of the Mayor's Office. In 2004, the Redevelopment Agency and the City Attorney entered into a Memorandum of Understanding for Provision of Legal Counsel Services ("2004 MOU") whereby the Redevelopment Agency retained the City Attorney to provide legal services, as requested by the Redevelopment Agency's in-house counsel. The 2004 MOU described the 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. Under the 2004 MOU, the City Attorney...
provided the Redevelopment Agency with high quality and cost effective legal services.

Upon dissolution of the Redevelopment Agency, state law initially required the City and County of San Francisco ("City") to become the Successor Agency. Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26"), Section 7 (defining successor agency to mean "the county, city, or city and county that authorized the creation of each redevelopment agency"). Under Section 6.102 (1) of the City Charter, the City Attorney is required to represent the City, including all of its boards, commissions, departments, officers and employees, in all legal matters and proceedings affecting the City. Accordingly, upon redevelopment dissolution, the City Attorney represented the Successor Agency because it was part of the City; the Successor Agency ceased to have its own in-house counsel.

In late June 2012, the state legislature enacted Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) ("AB 1484") to establish, among other things, that successor agencies were not the cities or counties that had created the former redevelopment agencies, but were in fact separate public entities. (AB 26 and AB 1484 are collectively referred to as the "Redevelopment Dissolution Law"). Furthermore, the Redevelopment Dissolution Law provided that the remaining assets and liabilities of the successor agencies were not transferred to their sponsoring cities or counties, that successor agencies could sue and be sued in their own name and that "litigation involving a redevelopment agency shall automatically be transferred to the successor agency." Cal. Health & Safety Code § 34173 (g). As a result of AB 1484, OCII became a state-authorized local entity (similar to the organizational structure of the Redevelopment Agency) legally separate from the City. Under these circumstances, the City Charter no longer requires the City Attorney to represent the Successor Agency. Nonetheless, the Board of Supervisors, in implementing AB 1484, authorized OCII "to retain, as it deems appropriate, the City Attorney for legal advice and representation." Section 7 of Ordinance No. 215-12 (Oct. 4, 2012). Since the adoption of AB 1484, the City Attorney has continued to represent OCII.

OCII and the City Attorney now propose entering into the Agreement, which implements AB 1484 and Ordinance No. 215-15 and formalizes the attorney-client relationship. The Agreement, which is attached to the resolution accompanying this memorandum, is based on the 2004 MOU whereby the City Attorney provided legal services to the Redevelopment Agency. The Agreement 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 in response to the request, and that billing for services be submitted and paid in a timely manner. The term of the Agreement starts retroactively to the date that AB 1484 became effective, i.e. June 27, 2012 (so that the standards governing the attorney-client relationship with the City Attorney apply to past work) and continues until either party provides a three month notice of termination or both parties mutually agree to terminate the Agreement. The source of funds for particular legal services will either be OCII’s administrative budget or project-related budgets for enforceable obligations, e.g. Mission Bay.⁴ As noted above, the parties will agree on a specific budget for services when the Executive Director retains the City Attorney for a particular legal matter. In addition, the Agreement addresses the procedures and standards for identifying potential conflicts of interest. Section 7 at pp. 8-14.

---

¹ Expenditures for legal services are included in the line items for administrative costs and for project-specific costs listed in the Recognized Obligation Payment Schedules and OCII’s annual budget.
Given that the City and OCII are legally separate entities, the potential for a conflict of interest arises when the City Attorney represents OCII. If an actual conflict existed, i.e. the interests of the two parties were adverse, the California Rules of Professional Responsibility would not permit the City Attorney to represent both the City and OCII because of the lawyer’s duty of loyalty.

The Agreement describes examples of conflicts of interest and provides a general framework for identifying potential conflicts when the City Attorney either concurrently or jointly represents OCII and the City. Both OCII and the City Attorney believe that the potential for conflicts is remote, but nonetheless the Agreement provides preliminary information about these conflicts and establishes a process to identify them at the time that OCII engages the City Attorney on a particular matter. This process includes identifying, at the time OCII requests City Attorney's services for a particular matter, “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...” Agreement, Section 7.3.1 at pp. 10.

With a process in place for identifying potential conflicts in the future, the Agreement will protect the interests of OCII by allowing it to use the significant resources and expertise of the City Attorney’s office but also acknowledging OCII’s authority to retain other counsel as it deems appropriate.

STAFF RECOMMENDATION

Staff recommends that the OCII Commission authorize the Executive Director to execute the Agreement with the City Attorney, to retain, under the terms of the Agreement, the City Attorney for particular legal matters, and to retain other counsel for a particular matter, especially where a potential conflict of interest has been identified.

(Originated by Jim Morales, Deputy Director)

Tiffany Bohee
Executive Director

2 The Agreement emphasizes that 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.” Agreement, Section 7.3.1 at p. 10.

3 The Agreement defines concurrent and joint representation in the following way: “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.” Agreement, Section 7.1 at p. 9.