ITEM 2

OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: 07/10/2012

SUBJECT: Adoption of a Resolution to Approve the Agreement for Legal Services with the Law Office of Don Detisch

CONTACT/PHONE NUMBER: David Graham/236-6980

DESCRIPTIVE SUMMARY OF ITEM:
Adoption of a resolution to approve the Agreement for Legal Services (Agreement) between the Successor Agency and the Law Office of Don Detisch and an expenditure not to exceed $200,000 for as-needed services under the Agreement.

STAFF RECOMMENDATION:
Approve proposed action.

DISCUSSION:
Since 1977, the Former RDA has engaged the services of highly specialized and experienced legal counsel to assist the San Diego City Attorney's Office (City Attorney's Office) and the former Redevelopment Agency of the City of San Diego (Former RDA) with the acquisition of certain properties located in the Centre City Redevelopment Project Area and with related litigation. The Law Office of Don Detisch (Don Detisch) was selected to provide these services as a result of a Request for Qualifications (RFQ) issued in 2004 by the City Attorney's Office and the Former RDA. The criteria used in selecting Don Detisch included expertise in eminent domain law and federal and state relocation rules and regulations, competitive fees, and commitment to equal opportunity.

For the past several months, Don Detisch's legal services have involved defending the Former RDA's interests, and now the Successor Agency's interests, in two separate lawsuits alleging inverse condemnation and one breach of contract claim with landowners Hon, LLP (Hon) and Chris Lafornara (Lafornara) in connection with the property located at 542 - 544 Market Street (Hon Property) and the property located at 1343 - 1345 Market Street (Lafornara Property).

The Oversight Board approved a Settlement Agreement and Release for the Hon litigation on May 31, 2012. Pursuant to the Settlement Agreement and Release, the Successor Agency paid Hon for settlement of all claims in the Hon litigation and acquired title to the Hon Property on June 25, thereby resolving the Hon litigation.

Currently, the Successor Agency is utilizing Don Detisch to provide legal services in connection with the Lafornara litigation. In November 2010, Lafornara filed a complaint in San Diego Superior Court against the Former RDA for breach of contract and back rent allegedly owed on the Lafornara Property. Lafornara later dismissed that complaint in May 2011. However, in a judicial foreclosure action brought by a secured lender, Provident Savings Bank (Bank), as to the

Lafornara Property, Lafornara filed a cross-complaint in May 2011 against the Bank, the Former RDA, and the Centre City Development Corporation (CCDC). The cross-complaint asserts two pertinent causes of action: (1) inverse condemnation (against the Former RDA only); and (2) violation of the California constitutional right to privacy (against CCDC only). As the result of Lafornara's failure to pay the Bank's loan, the Bank completed a non-judicial foreclosure and acquired the Lafornara Property through a credit bid at a trustee's sale in late June 2011. The City of San Diego (City) purchased the Lafornara Property from the Bank in January 2012, thereby resolving all breach of contract and back rent claims related to the Lafornara Property. The litigation of the inverse condemnation claim against the Successor Agency related to the Lafornara Property continues.

In addition, Don Detisch will pusue cross complaints against Healthcare Services, Inc., the current tenant occupying the Properties, on behalf of the Successor Agency for back rent and indemnification of losses allegedly incurred by Hon and Lafornara.

The City Attorney's Office has determined that it has insufficient staff to adequately handle these matters. Don Detisch has been handling these matters pursuant to an existing agreement for legal services with the Successor Agency, but the funds available under the existing agreement were recently exhausted due to the high volume of work required by ongoing litigation.

The proposed new agreement (Agreement) between the Successor Agency and Don Detisch, attached to this report as Attachment 1, would provide for compensation not to exceed $200,000 and would expire on December 31, 2013, upon exhaustion of the $200,000 compensation, or upon completion of the scope of services, whichever occurs first. The scope of services shall be limited to the litigation described above.

The Successor Agency continues to need the specialized legal services that Don Detisch provides. Don Detisch's office is very familiar with the complex factual background and legal issues raised in the ongoing litigation, having been involved with the transactions and negotiations on the Former RDA's behalf with respect to the Properties since at least 2005. Moreover, Don Detisch has specialized legal experience in the types of issues (e.g., inverse condemnation, lease disputes) that have arisen in the lawsuits. His continued participation as the lead attorney in the litigation is essential to preserving the Successor Agency's legal and financial interests in the litigation and negotiation of potential settlements.

The City Council, acting in its capacity as the board of the Successor Agency, adopted a resolution authorizing the retention of Don Detisch by unanimous vote on June 19, 2012.

David Graham
Office of the Mayor

Jay Goldstone
Chief Operating Officer

Attachment 1: Agreement for Legal Services

AGREEMENT FOR LEGAL SERVICES

ON AN AS-NEEDED BASIS

BETWEEN

THE CITY OF SAN DIEGO,

AS DESIGNATED SUCCESSOR AGENCY TO THE

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO,

AND

THE LAW OFFICE OF DON DETISCH

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AGREEMENT FOR LEGAL SERVICES ON AN AS-NEEDED BASIS BETWEEN THE CITY OF SAN DIEGO, AS DESIGNATED REDEVELOPMENT SUCCESSOR AGENCY, AND THE LAW OFFICE OF DON DETISCH

This Agreement for Legal Services on an as-needed basis is made and entered into between the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment City of the City of San Diego, a former public body, corporate and politic [Successor Agency], and The Law Office of Don Detisch [Law Firm] for the Law Firm to provide legal services to the Successor Agency.

RECITALS

The Successor Agency wants to retain the services of a law firm to provide specialized legal services with respect to the properties located at 542 - 544 Market Street and 1343 - 1345 Market Street with Assessor's Parcel Numbers 535-152-12, 535-152-09, 535-152-10, all located in the Centre City Redevelopment Project Area, on an "as-needed" basis [the Services].

The Law Firm has the expertise, experience and personnel necessary to provide the Services. The Successor Agency and the Law Firm [collectively, Parties] want to enter into an Agreement whereby the Successor Agency will retain the Law Firm to provide, and the Law Firm shall provide, the Services.

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

LAW FIRM SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services. The Law Firm shall perform the Services on an as-needed basis as set forth in the written Scope of Services [Exhibit A] at the direction of the Successor Agency.

1.2 Contract Administrator. The Office of the City Attorney of the City of San Diego [City Attorney] is the contract administrator for this Agreement. The Law Firm shall provide the Services under the direction of a designated representative of the City Attorney, who can be contacted at:

C/o Kevin Reisch, DCA
619-236-7722
kreisch@sandiego.gov

The Law Firm shall communicate with the Successor Agency's designated representative on all matters related to the administration of this Agreement and the Law Firm's performance of the Services rendered hereunder. The Successor Agency's designated representative has authority to represent the Successor Agency with respect to all communications, acts, or approvals in connection with this Agreement, unless this Agreement specifies otherwise.

1.3 Modification of Scope of Services. The Successor Agency may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to or deducting from the Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Law Firm's cost of, or the time required for, the performance of any of the Services, the Law Firm shall immediately notify the Successor Agency. If the Successor Agency deems it appropriate, an equitable adjustment to the Law Firm's compensation or time for performance may be made subject to the restrictions set forth in Section 3.1 of this Agreement, and provided that any adjustment must be approved by both Parties in writing in accordance with Section 9.1 of this Agreement.

1.4 Written Authorization. Prior to performing any Services, the Law Firm shall obtain from the Successor Agency a written authorization to proceed. Further, throughout the term of this Agreement, the Law Firm shall immediately advise the Successor Agency in writing of any anticipated change in the Scope of Services [Exhibit A], Compensation and Fee Schedule [Exhibit B], or Time Schedule [Exhibit C], and shall obtain the Successor Agency's written consent to the change prior to making any changes. In no event shall the Successor Agency's consent be construed to relieve the Law Firm from its duty to render all Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services. All Services performed by the Law Firm, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Law Firm, pursuant to this Agreement, are for the sole use of the Successor Agency, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the Successor Agency. The requirement not to disclose any documents or their contents without the Successor Agency's prior consent is over and above the Law Firm's ethical obligations to keep any and all attorney work product and attorney-client communications confidential.

This provision does not apply to information that: (a) was publicly known, or otherwise known to the Law Firm, at the time that it was disclosed to the Law Firm by the Successor Agency, (b) subsequently becomes publicly known through no act or omission of the Law Firm, or (c) otherwise becomes known to the Law Firm other than through disclosure by the Successor Agency. Except for Subcontractors covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the Successor Agency.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40. Unless otherwise terminated, it shall be effective until December 31, 2013, or until completion of the Scope of Services, whichever occurs first, but not to exceed five years unless approved by City of San Diego [City] ordinance. This Agreement shall be deemed to supersede the existing legal services contract between the former Redevelopment Agency of the City of San Diego and the Law Firm dated May 16, 2005, as amended, at such time that all of the funds under such existing contract have been expended, but in any event no later than July 1, 2012. And if any services have been provided by the Law Firm pursuant to the existing contract that result in incremental costs exceeding the maximum expenditure amount under the existing contract, then the Successor Agency will pay for those incremental costs in accordance with this Agreement and such incremental costs shall be applied against the maximum expenditure amount under this Agreement.

2.2 Time of Essence. Time is of the essence for each provision of this Agreement, unless otherwise specified in this Agreement. The time for performance of the Scope of Services [Exhibit A] is set forth in the Time Schedule [Exhibit C].

2.3 Notification of Delay. The Law Firm shall immediately notify the Successor Agency in writing if the Law Firm experiences or anticipates experiencing a delay in performing the Services within the time frames set forth in the Time Schedule [Exhibit C]. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the Successor Agency, the delay affects a material part of the Successor Agency's requirements for the Services, the Successor Agency may exercise its rights under Sections 2.5-2.7 of this Agreement.

2.4 Delay. If delays in the performance of the Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Law Firm to a reasonable extension of time, but such delay shall not entitle the Law Firm to damages or additional compensation. Any such extension of time must be approved in writing by the Successor Agency. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Law Firm's work; inability to obtain materials, equipment, or labor; required additional Services; or other specific reasons agreed to between the Successor Agency and the Law Firm; provided, however, that: (a) this provision shall not apply to, and the Law Firm shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Law Firm; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Law Firm to an extension of time unless the Law Firm furnishes to the Successor Agency, in a timely manner, documentary proof satisfactory to the Successor Agency of the Law Firm's inability to obtain materials, equipment, or labor.

2.5 Right to Suspend for Convenience. The Successor Agency may, at its sole option and for its convenience, suspend all or any portion of the Law Firm's performance of the Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the Successor Agency will give written notice to the Law Firm of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the Successor Agency shall pay to the Law Firm a sum equivalent to the reasonable value of the Services the Law Firm has satisfactorily performed up to the date of suspension. Thereafter, the Successor Agency may rescind such suspension by giving written notice of rescission to the Law Firm. The Successor Agency may then require the Law Firm to resume performance of the Services in compliance with the terms and conditions of this Agreement; provided, however, that the Law Firm shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 Right to Terminate for Convenience. The Successor Agency may, at its sole option and for its convenience, terminate all or any portion of the Services agreed to pursuant to this Agreement by giving written notice of such termination to the Law Firm. Such notice shall be delivered by certified mail with return receipt for delivery to the Successor Agency. The termination of the Services shall be effective upon receipt of the notice by the Law Firm. After termination of this Agreement, the Law Firm shall complete any and all additional work necessary for the orderly filing of documents and closing of the Law Firm's Services under this Agreement. For services satisfactorily rendered in completing the work, the Law Firm shall be entitled to fair and reasonable compensation for the Services performed by the Law Firm before the effective date of termination. After filing of documents and completion of performance, the Law Firm shall deliver to the Successor Agency all documents or records related to the Law Firm's Services. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Law Firm discharges the Successor Agency of all of the Successor Agency 's payment obligations and liabilities under this Agreement.

2.7 Right to Terminate for Default. If the Law Firm fails to satisfactorily perform any obligation required by this Agreement, the Law Firm's failure constitutes a Default. A Default includes the Law Firm's failure to adhere to the Time Schedule [Exhibit C]. If the Law Firm fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the Successor Agency specifying the nature of the Default, the Successor Agency may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Law Firm, and any person claiming any rights by or through the Law Firm under this Agreement. The rights and remedies of the Successor Agency enumerated in this Section are cumulative and shall not limit, waive, or deny any of the Successor Agency's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the Successor Agency against the Law Firm.

ARTICLE III

COMPENSATION

3.1 Amount of Compensation. The Successor Agency shall pay the Law Firm for performance of all Services on an as-needed basis rendered in accordance with this Agreement,

including reasonably related expenses, in an amount not to exceed two hundred thousand dollars [$200,000.00] without further authorization. The compensation for Additional Services (described in Section 3.3), if any, shall be as authorized by the City Council, or their designee.

The Law Firm shall immediately inform the Successor Agency when the cumulative value of work done under this Agreement exceeds 80% of the total compensation authorized in this paragraph, or when it reasonably appears to the Law Firm that the cumulative value of work done under this Agreement may exceed the total compensation authorized in this paragraph within 45 days. The Successor Agency shall not be responsible for payment for work performed in excess of the maximum amount authorized. In addition, the Law Firm acknowledges that, notwithstanding any other written or oral representation, total compensation under this contract may not exceed $200,000 unless such expenditure is first approved by the City Council, pursuant to section 22.3223 of the San Diego Municipal Code.

The Law Firm acknowledges and agrees that the Successor Agency shall fulfill its financial obligations under this Agreement through tax increment funds or other assets possessed or made available to the Successor Agency, and not through the City's General Fund or any other general funds or assets of the City. Accordingly, nothing in this Agreement shall require the City to expend or promise to expend monies from its General Fund or related assets to satisfy all or any portion of the obligations set forth in this Agreement.

3.2 Additional Services. The Successor Agency may require the Law Firm to perform additional Services beyond those described in the Scope of Services [Additional Services]. Prior to the Law Firm's performance of Additional Services, the Successor Agency and the Law Firm must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with the Compensation and Fee Schedule [Exhibit B]. The Successor Agency will pay the Law Firm for the performance of Additional Services in accordance with Section 3.3.

3.3 Manner of Payment. The Successor Agency shall pay the Law Firm in accordance with the Compensation and Fee Schedule [Exhibit B]. For the duration of this Agreement, the Law Firm shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Law Firm shall submit one invoice per calendar month in a form acceptable to Successor Agency in accordance with the Compensation and Fee Schedule. The Law Firm shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the Successor Agency. The Successor Agency will pay undisputed portions of invoices within thirty calendar days of receipt. Invoice shall be mailed to the following address:

Office of the City Attorney
C/o Kevin Reisch, DCA
1200 Third Avenue, Suite 1100
San Diego, CA 92101
(619) 236-7722

3.4 Additional Costs. Additional Costs are those costs that can be reasonably determined to be related to the Law Firm's errors or omissions, and may include Law Firm, Successor Agency, or Subcontractor overhead, materials, and related costs. The Law Firm shall not be paid for the Services required due to the Law Firm's errors or omissions, and the Law Firm shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Law Firm. Whether or not there are any monies due, or becoming due, the Law Firm shall reimburse the Successor Agency for Additional Costs due to the Law Firm's errors or omissions.

3.5 No Pledge of City Assets. The Law Firm acknowledges and agrees that any financial obligation of the Successor Agency under this agreement is and shall be a special limited obligation, payable solely from funds transferred to the Successor Agency by the San Diego County Auditor-Controller from the Redevelopment Property Tax Trust Fund pursuant to California Health and Safety Code section 34183(a)(2), and is not and shall not be a pledge of or obligation payable through the City of San Diego's (City) General Fund or any of the City's other assets. Accordingly, nothing in this Agreement shall require or be deemed to require the City to expend or commit to expend monies from its general fund or any of the City's other assets.

ARTICLE IV

LAW FIRM'S OBLIGATIONS

4.1 Industry Standards. The Law Firm agrees that the Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent law firm using the degree of care and skill ordinarily exercised by reputable attorneys practicing in the State of California. Where approval by the Successor Agency, the Mayor or his designee, or other representatives of the Successor Agency is required, it is understood to be general approval only and does not relieve the Law Firm of responsibility for complying with all applicable laws, codes, and industry standards.

4.2 Right to Audit.

4.2.1 Access. The Successor Agency retains the right to review and audit, and the reasonable right of access to Law Firm's and any Subcontractor's premises to review and audit the Law Firm's or Subcontractor's compliance with the provisions of this Agreement [Successor Agency's Right]. The Successor Agency's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Law Firm's premises, of any and all records related to the Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the Successor Agency in its sole discretion. This information shall be kept by the Successor Agency in the strictest confidence allowed by law.

4.2.2 Audit. The Successor Agency's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the Successor Agency determines are necessary to discover and verify that the Law Firm or Subcontractor is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit. If there is a claim for additional compensation or for Additional Services, the Successor Agency's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the Successor Agency determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records. The Law Firm and all Subcontractors shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Law Firm and Subcontractors shall make available to the Successor Agency for review and audit; all Service-related accounting records and documents, and any other financial data. Upon the Successor Agency's request, the Law Firm and Subcontractors shall submit exact duplicates of originals of all requested records to the Successor Agency.

4.2.3 Right Binding on Subcontractors. The Law Firm shall include the Successor Agency's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

4.2.4 Compliance Required before Mediation or Litigation. A condition precedent to proceeding with mandatory mediation and further litigation provided for in Article VII is the Law Firm's and Subcontractors full compliance with the provisions of this Section 4.2 within sixty days of the date on which the Successor Agency mailed a written request to review and audit compliance.

4.3 Insurance. The Law Firm shall not begin the Services under this Agreement until it has: (a) obtained, and provided to the Successor Agency, insurance certificates reflecting evidence of all insurance as set forth in Exhibit D; however, the Successor Agency reserves the right to request, and the Law Firm shall submit, copies of any policy upon reasonable request by the Successor Agency; (b) obtained Successor Agency approval of each company or companies as described in Exhibit D; and (c) confirmed that all policies contain the specific provisions required in Exhibit D. Law Firm's liabilities, including but not limited to Law Firm's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that the Successor Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and Law Firm's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of contract by the Successor Agency.

Further, the Law Firm shall not modify any policy or endorsement thereto which increases the Successor Agency's exposure to loss for the duration of this Agreement.

4.4 Subcontractors. The Law Firm's hiring or retaining of any third parties [Subcontractors] to perform services [Subcontractor Services] in any way related to the Scope of Services is subject to prior approval by the Successor Agency. The Law Firm shall list on the Subcontractor List [Exhibit E] all Subcontractors known to the Law Firm at the time this

Agreement is entered. If at any time after this Agreement is entered into the Law Firm identifies a need for additional Subcontractor Services, the Law Firm shall give written notice to the Successor Agency of the need, at least fifteen days before entering into a contract for such Subcontractor Services. The Law Firm's notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subcontractor Services. The Law Firm may request that the Successor Agency reduce the fifteen day notice period. The Successor Agency agrees to consider such requests in good faith.

4.4.1 Subcontractor Contract. All contracts entered into between the Law Firm and any Subcontractor shall contain the information as described in Sections 4.6, 4.7, and 4.8, and shall also provide as follows:

4.4.1.1 Each Subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Agreement. Each Subcontractor shall obtain, and the Law Firm shall require the Subcontractor to obtain, all policies described in Exhibit D in the amounts required by the Successor Agency, which shall not be greater than the amounts required of the Law Firm.

4.4.1.2 The Law Firm is obligated to pay the Subcontractor, for Law Firm and Successor Agency-approved invoice amounts, out of amounts paid by the Successor Agency to the Law Firm, not later than fourteen working days from the Law Firm's receipt of payment from the Successor Agency. Nothing in this paragraph shall be construed to impair the right of the Law Firm and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

4.4.1.3 In the case of a deficiency in the performance of Subcontractor Services, the Law Firm shall notify the Successor Agency in writing of any withholding of payment to the Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subcontractor must take in order to receive the amount withheld. Once the Subcontractor corrects the deficiency, the Law Firm shall pay the Subcontractor the amount withheld within fourteen working days of the Law Firm's receipt of the Successor Agency's next payment.

4.4.1.4 In any dispute between the Law Firm and Subcontractor, the Successor Agency shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Law Firm agrees to defend and indemnify the City and the Successor Agency as described in Article VI of this Agreement in any dispute between the Law Firm and Subcontractor should the City or the Successor Agency be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Successor Agency is an intended beneficiary of any work performed by the Subcontractor for purposes of establishing a duty of care between the Subcontractor and the Successor Agency.

4.5 Contract Activity Report. The Law Firm shall submit statistical information to the Successor Agency as requested in the City's Contract Activity Report [Exhibit E]. The

statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Law Firm shall provide an invoice from each Subcontractor listed in the report. The Law Firm agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the Successor Agency for Subcontractor Services as described in Section 4.4.1.2.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program. The Law Firm shall comply with the City's Equal Opportunity Contracting Program Law Firm Requirements [Exhibit E]. The Law Firm shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Law Firm shall provide equal opportunity in all employment practices. The Law Firm shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Law Firm Requirements. Nothing in this Section shall be interpreted to hold the Law Firm liable for any discriminatory practice of its Subcontractors.

4.6.2 Non-Discrimination Ordinance. The Law Firm shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The Law Firm shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Law Firm understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Law Firm and any Subcontractors, vendors and suppliers.

4.6.3 Compliance Investigations. Upon the Successor Agency's request, the Law Firm agrees to provide to the Successor Agency, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Law Firm has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Law Firm for each subcontract or supply contract. The Law Firm further agrees to fully cooperate in any investigation conducted by the Successor Agency or the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517]. The Law Firm understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Law Firm up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Law Firm further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.7 Drug-Free Workplace. The Law Firm agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Law Firm shall certify to the Successor Agency that it will provide a drug-free workplace by submitting a Law Firm Certification for a Drug-Free Workplace form [Exhibit F].

4.7.1 Law Firm's Notice to Employees. The Law Firm shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program. The Law Firm shall establish a drug free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement. In addition to Section 4.7.1 above, the Law Firm shall post the drug free policy in a prominent place.

4.7.4 Subcontractor's Agreements. The Law Firm further certifies that each contract for Subcontractor Services for this Agreement shall contain language that binds the Subcontractor to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Law Firms and Subcontractors shall be individually responsible for their own drug free work place program.

4.8 ADA Certification. The Law Firm hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference. The RDA acknowledges the Law Firm occupies leased space, and for this reason, is unable to certify every potion of the building they occupy is in compliance with these requirements.

4.9 Product Endorsement. The Law Firm acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95.65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.10 Conflict of Interest. The Law Firm is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595. In addition, the Law Firm is subject to all laws, regulations, rules and policies applicable to the legal profession.

4.10.1 If, in performing the Services set forth in this Agreement, the Law Firm makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2)

of the California Code of Regulations, or performs the same or substantially all the same duties for the Successor Agency that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Law Firm shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Law Firm's relevant financial interests.

4.10.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Law Firm shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Law Firm is subject to a conflict of interest code. The Law Firm shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Law Firm was subject to a conflict of interest code.

4.10.1.2 If the City requires the Law Firm to file a statement of economic interests as a result of the Services performed, the Law Firm shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City or the Successor Agency for one year following the termination of this Agreement.

4.10.2 The Law Firm shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

4.10.3 The Law Firm's personnel employed for the Services shall not accept gratuities or any other favors from any Subcontractors or potential Subcontractors. The Law Firm shall not recommend or specify any product, supplier, or contractor with whom the Law Firm has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.10.4 If the Law Firm violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Law Firm to liability to the Successor Agency or City for attorney's fees and all damages sustained as a result of the violation.

4.10.5 Prior to commencing representation of the Successor Agency, the Law Firm shall, in conformity with the standards normally followed by law firms performing comparable work, identify any actual or potential conflicts between the Successor Agency's interests and its own interests or those of its current or former clients. In addition, the Law Firm shall continue to monitor its own interests and those of its clients to identify any conflicts that may arise during the course of the representation. The Law Firm shall immediately inform the Successor Agency of any actual or potential conflicts. This paragraph shall not relieve the Law Firm of its duties to the Successor Agency arising under the Rules of Professional Conduct of the State Bar of California or other applicable laws, regulations, rules and policies.

4.11 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the Successor

Agency's request, the Law Firm, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Law Firm's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance. The Successor Agency will compensate the Law Firm for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Law Firm, its agents, officers, and employees, the Law Firm shall reimburse the Successor Agency. The Successor Agency is then entitled to reimbursement of all fees paid to the Law Firm, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney Fees related to Mandatory Assistance. In providing the Successor Agency with dispute or litigation assistance, the Law Firm or its agents, officers, and employees may incur expenses and/or costs. The Law Firm agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

4.14 Submittals. Law Firm is required to submit the following documentation in accordance with this Agreement. Failure to provide the required submittals listed below with the Agreement shall delay completion of the Agreement, and therefore, commencement of scope of work and payments to Law Firm.

- Insurance Certificates with all endorsements (Exhibit D)
- Equal Opportunity Forms (Exhibit E)
- Drug Free Workplace Form (Exhibit F);
- Vendor Registration (Exhibit G);
- Business Tax License;
- Taxpayer Identification Number (W-9) if not currently on file; (http://www.irs.gov/formspubs/lists)
- Contractor Standard Pledge of Compliance (Exhibit H)

ARTICLE V

RESERVED

ARTICLE VI

INDEMNIFICATION

6.1 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Law Firm, or Law Firm's employees, agents, and officers, arising out of any services performed under this Agreement, the Law Firm agrees to defend, indemnify, protect, and hold harmless the Successor Agency, the City, and their respective agents, officers, and employees from and against all liability. The Law Firm's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the Successor Agency, the City, their agents, officers or employees.

ARTICLE VII

MEDIATION

7.1 Mandatory Non-binding Mediation. With the exception of Sections 2.5-2.7 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in the relevant subject matter and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

7.3.1 If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

7.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII

INTELLECTUAL PROPERTY RIGHTS

8.1 Work For Hire. All original designs, plans, specifications, reports, documentation, and other informational materials, whether written or readable by machine, originated or prepared exclusively for the Successor Agency pursuant to this Agreement [Deliverable Materials] is "work for hire" under the United States Copyright law and shall become the sole property of the Successor Agency. The Law Firm, including its employees, and independent Subcontractor(s), shall not assert any common law or statutory patent, copyright, trademark, or any other intellectual proprietary right to the Successor Agency to the deliverable Materials.

8.2. Rights in Data. All rights (including, but not limited to publication(s), registration of copyright(s), and trademark(s)) in the Deliverable Materials, developed by the Law Firm, including its employees, agents, talent and independent Subcontractors pursuant to this Agreement are the sole property of the Successor Agency. The Law Firm, including its employees, agents, talent, and independent Subcontractor(s), may not use any such Product mentioned in this article for purposes unrelated to Law Firm's work on behalf of the Successor Agency without prior written consent of the Successor Agency.

8.3 Intellectual Property Rights Assignment Law Firm, its employees, agents, talent, and independent Subcontractor(s) agree to promptly execute and deliver, upon request by Successor Agency or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent,

trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the Successor Agency, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials; and cooperate and assist in the prosecution of any action or opposition proceeding involving said rights and any adjudication of the same.

8.4 Moral Rights Law Firm, its employees, agents, talent, and independent Subcontractor(s) hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Deliverable Materials which Law Firm, its employees, agents, talent, and independent Subcontractor(s), may now have or which may accrue to Law Firm, its employees, agents, talent, and independent Subcontractor(s)' benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the and the right to object to any modification, translation or use of said content, and any similar rights existing under judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.

8.5 Subcontracting In the event that Law Firm utilizes a Subcontractor(s) for any portion of the Services that is in whole or in part of the specified Deliverable(s) to the Successor Agency, the agreement between Law Firm and the Subcontractor [Subcontractor Agreement] shall include a statement that identifies that the Deliverable Materials as a "work-for hire" as defined in the Act and that all intellectual property rights in the Deliverable Materials , whether arising in copyright, trademark, service mark or other belongs to and shall vest solely with the Successor Agency. Further, the Subcontractor Agreement shall require that the Subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to the Successor Agency, all titles, rights and interests in and to said Deliverable Materials, including all copyrights and other intellectual property rights. Successor Agency shall have the right to review any Subcontractor agreement for compliance with this provision.

8.6 Publication. Law Firm may not publish or reproduce any Deliverable Materials, for purposes unrelated to Law Firm's work on behalf of the Successor Agency without prior written consent of the Successor Agency.

8.7 Intellectual Property Warranty and Indemnification. Law Firm represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, Successor Agency shall have the right, in its sole discretion, to require Law Firm to produce, at Law Firm's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the Successor Agency under law or equity. Law Firm further agrees to indemnify and hold harmless the Successor Agency, the City, and their respective officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or works provided under this Agreement infringe the copyright,

trademark, patent or other intellectual property or proprietary rights of any third party [Third Party Claims of Infringement]. If a Third Party Claim of Infringement is threatened or made before Law Firm receives payment under this Agreement, Successor Agency shall be entitled, upon written notice to Law Firm, to withhold some or all of such payment.

8.8 Enforcement Costs. The Law Firm agrees to pay any and all costs the Successor Agency or the City incurs enforcing the indemnity and defense provisions set forth in Article VIII, including but not limited to, attorneys' fees.

ARTICLE IX

MISCELLANEOUS

9.1 Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the Successor Agency shall be addressed to: City Attorney's Office, 1200 Third Avenue, Suite 1620, San Diego, CA 92101 and notice to the Law Firm shall be addressed to: The Law Office of Don Detisch, 1010 2nd Ave., Suite 1850, San Diego, CA 92101.

9.2 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.3 Non-Assignment. The Law Firm shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the Successor Agency's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the Successor Agency. In no event shall any putative assignment create a contractual relationship between the Successor Agency and any putative assignee.

9.4 Independent Contractors. The Law Firm and any Subcontractors employed by the Law Firm shall be independent contractors and not agents of the Successor Agency. Any provisions of this Agreement that may appear to give the Successor Agency any right to direct the Law Firm concerning the details of performing the Services, or to exercise any control over such performance, shall mean only that the Law Firm shall follow the direction of the Successor Agency concerning the end results of the performance.

9.5 Law Firm and Subcontractor Principals for Law Firm Services. It is understood that this Agreement is for unique professional Services. Retention of the Law Firm's professional Services is based on the particular professional expertise of the following members of the Law Firm's organization: Don Detisch[Project Team]. Performance of Professional Services on the Project may be delegated by Mr. Detisch to other members of the Law Firm as may become necessary for the Project. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all professional Services and may not be removed from the Project without the Successor Agency's prior written approval. Removal of any member of the Project Team without notice and approval by the Successor Agency may be

considered a default of the terms and conditions of this Agreement by the Law Firm. In the event any member of the Project Team becomes unavailable for any reason, the Successor Agency must be consulted as to any replacement. If the Successor Agency does not approve of a proposed replacement, the Successor Agency may terminate this Agreement pursuant to Section 2.6 of this Agreement. Further, the Successor Agency reserves the right, after consultation with the Law Firm, to require any of the Law Firm's employees or agents to be removed from the Project.

9.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the Successor Agency or the Law Firm shall be deemed to be both covenants and conditions.

9.7 Compliance with Controlling Law. The Law Firm shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement. In addition, the Law Firm shall comply immediately with all directives issued by the Successor Agency or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

9.8 Jurisdiction and Attorney Fees. The jurisdiction and applicable laws for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding. For the City Attorney's work done in any suit or proceeding, the reasonable attorneys' fees shall be deemed to be $250 per hour.

9.9 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

9.10 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Agreement.

9.11 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

9.12 No Waiver. No failure of either the Successor Agency or the Law Firm to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant,

term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

9.13 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

9.14 Additional Law Firms or Contractors. The Successor Agency reserves the right to employ, at its own expense, such additional Law Firms or contractors as the Successor Agency deems necessary to perform work or to provide the Services.

9.15 Employment of City Staff. This Agreement may be unilaterally and immediately terminated by the Successor Agency, at its sole discretion, if the Law Firm employs an individual who, within the last twelve months immediately preceding such employment did, in the individual's capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or Mayor in connection with the selection of the Law Firm.

9.16 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.17 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

9.18 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

9.19 Exhibits Incorporated. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

9.20 Survival of Obligations. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, shall survive, completion and acceptance of the Professional Services and termination or completion of the Agreement.

The remainder of this page has intentionally been left blank.

IN WITNESS WHEREOF, this Agreement is executed by the Successor Agency and by the Law Firm.

I hereby certify that I can legally bind the Law Office of Don Detisch, and that I have read all of this Agreement this_____ day of_____, 2012.

CITY OF SAN DIEGO,

SOLELY IN ITS CAPACITY AS THE DESIGNATED SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, A FORMER PUBLIC BODY, CORPORATE AND POLITIC

LAW OFFICE OF DON DETISCH

BY:_____

DATE SIGNED June 13 2012

BY:_____

Jay Goldstone
Chief Operating Officer

DATE SIGNED _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2012.

JAN I. GOLDSMITH, City Attorney:

By:_____

Mary Jo Lanzafame
Assistant City Attorney

EXHIBITS

Exhibit A - Scope of Services

Exhibit B - Compensation and Fee Schedule

Exhibit C - Time Schedule

Exhibit D - Insurance

Exhibit E - City's Equal Opportunity Contracting Program Law Firm Requirements

Exhibit F - Law Firm Certification for a Drug-Free Workplace

EXHIBIT A

SCOPE OF SERVICES

***THIS EXHIBIT CONTAINS CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS PURSUANT TO CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 6149.**

Law Firm shall render legal services to the Successor Agency under the direction of the City Attorney in the area of acquisition of, and litigation related to, the properties located at 542 - 544 Market Street and 1343 - 1345 Market Street with Assessor's Parcel Numbers of 535-152-12, 535-152-09, 535-152-10, all located in the Centre City Redevelopment Project Area, on an as-needed basis.

EXHIBIT B

COMPENSATION AND FEE SCHEDULE
& BILLING GUIDELINES

*THIS EXHIBIT CONTAINS CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATIONS PURSUANT TO CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 6149.

A. The Successor Agency has appropriated or otherwise duly authorized the payment of a maximum amount of two hundred thousand dollars [$200,000] for legal services and out-of-pocket disbursements for the term of this Agreement for authorized services on an as-needed basis performed at the direction of the Successor Agency. In no event shall the total fees plus out-of-pocket disbursements exceed this maximum amount without the specific written authorization of the Successor Agency.

B. The Successor Agency shall not be obligated to pay the Law Firm more than the authorized maximum amount unless the Successor Agency makes additional amounts available for the performance of additional legal services under this Agreement.

C. The Successor Agency agrees to pay the Firm for authorized legal services performed at the direction of the Successor Agency as follows:

$200 per hour for Don Detisch
$165 per hour for Associates
$95 per hour for Paralegals

D. Billing: All billing will be subject to the following guidelines:

BILLING GUIDELINES FOR OUTSIDE COUNSEL [BG]

Introduction

These guidelines describe your responsibilities as a lawyer or law firm retained by the Successor Agency or the City. Every effort has been made to be clear and reasonable, so that you can provide excellent legal services for the lowest possible cost to the taxpayers. **PLEASE NOTE: No invoice shall be approved without a signed Agreement for Legal Services [ALS] and a signed approval of the Billing Guidelines [BG].**

Each invoice you submit will be reviewed by the Successor Agency's representative with these guidelines in mind. We expect your compliance and invite any questions or comments you may have about these new processes. We look forward to a closer and more productive relationship, based on this foundation.

Billing Format

Each invoice shall list the billing and expenses separately for each person represented.

Each bill shall include an invoice showing the amount of services rendered during the billing period, the fee for such services and the amount of reimbursable expenses. The invoice shall be accompanied by a separate invoice support statement that briefly describes each item of work performed, the identity of the person who performed the work and itemized reimbursable expenses. For itemized reimbursable expenses, include for travel and meals who, when where. The invoice support statement shall be marked "Confidential -- Attorney-Client and/or Work Product Privilege." The invoice may be subject to disclosure pursuant to the California Public Records Act."

The billing entries on the support statement must be complete, discrete, and appropriate.

Invoice Support Statement: Complete

- The statement should first identify each person represented, with all billing and expenses incurred as to the representation of that particular individual following.
- Each entry must name the person or persons involved. For instance, telephone calls must include the names of all participants.
- The date the work was performed must be included
- The hours should be billed in .10 hour increments
- The specific task performed should be described, and the related work product should be referenced ("telephone call re: trial brief," "interview in preparation for deposition").
- The biller's professional capacity (partner, associate, paralegal, etc.) should be included

Discrete

Each task must be set out as a discrete billing entry; neither narrative nor block billing is acceptable.

Appropriate

- The Successor Agency does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the Successor Agency will not pay for secretarial time, word processing time, air conditioning, rental of equipment, including computers, meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes.
- The Successor Agency will not pay for outside expenses such as delivery fees, outside photocopying, videotaping of depositions, investigative services, computer litigation support services, or overnight mail, unless prior approval is given in writing.
- Due to the nature of the applicable payment process, the Successor Agency will not pay any late charges. Every effort will be made to pay bills promptly.

Staffing

Every legal matter should have a primarily responsible attorney and a paralegal assigned. Ultimately, staffing is a Successor Agency decision, and the Successor Agency's representative may review staffing to insure that it is optimal to achieve the goals of the engagement at the least cost.

Paralegals are to be used to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered associate work should be considered for assignment to a paralegal.

Once an attorney is given primary responsibility for an engagement, that person should continue on the legal matter until the matter is concluded or the attorney leaves the firm. The Successor Agency will not pay the costs of bringing a new attorney up to speed.

If more than one attorney is going to perform the same task, prior approval from the Successor Agency must be had. This includes document review.

Written Memoranda

If legal research results in a written memorandum, whether formal or informal, a hard copy and a digital copy should be forwarded to the Successor Agency.

Internal Conferencing

Regardless of how many people from your firm attend a meeting, only one may bill the time.

Travel

Mileage will be reimbursed at the current IRS rate. Air travel will be reimbursed at coach or lower rate. Overnight accommodations shall not exceed $110/night without prior approval. Meals while traveling must be reasonably priced. No reimbursement of alcoholic beverages is allowed.

Hourly Rates

Hourly rates may not be increased without the written approval of the Successor Agency. Only reasonable rates will be approved for payment. All rates shall be approved prior to invoicing or payment.

Out-of-Pocket Disbursements

The Successor Agency agrees to reimburse the Firm, in accordance with the procedures set out here, for similar out-of-pocket expenses charged by the Firm as a standard practice to its clients, unless expressly denied by these guidelines. In any billing for disbursements, the Firm shall provide the Successor Agency with a statement breaking down the amounts by category of expense.

The following items will not be reimbursed, unless the Successor Agency has specifically agreed to accept the following expenses:

(1) Word Processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge.

(2) Storage of open or closed files, rent, electricity, air conditioning, local telephone, postage, receipt or local transmission of facsimile documents, rental of equipment including computers, meals served at meetings, or any other items traditionally associated with overhead.

(3) Litigation support or any other service in excess of the amount actually expended by the Firm for such service. The Successor Agency will not pay for any incremental amount, whether it is intended to recover the cost of equipment and hardware or not.

(4) Photocopy charges in excess of $.10 (ten cents) per page.

(5) Auto mileage rates in excess of the rate approved by the Internal Revenue Service for income tax purposes.

(6) Overtime compensation. Where case requirements demand overtime, the Successor Agency will consider reimbursement on a case-by-case basis. The Successor Agency will not reimburse overtime incurred for the convenience of the Firm where the deadline was known in advance.

(7) Equipment, books, periodicals, research materials, online research, Westlaw/Lexis or like items.

(8) Express charges, overnight mail charges, messenger services or the like, without the Successor Agency's prior consent. The Successor Agency expect these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, the Successor Agency will consider reimbursement on a case-by-case basis.

(9) Air travel fares in excess of economy or coach class fares; lodging, meals, and ground transportation expenses in excess of $250 per day.

(10) Videotaping of depositions, investigative services, outside photocopying, and computer litigation support services unless the Successor Agency gives prior written approval.

Records

The individual disbursement records customarily maintained by the Firm for billing evaluation and review purposes shall be made available to the Successor Agency in support of bills rendered by the Firm.

Invoices

The Firm agrees to forward to the Successor Agency a statement of account for each one month (or, if requested by the Successor Agency, two-week) period of services under this Agreement, and the Successor Agency agrees to compensate the Firm on this basis.

The Firm will submit monthly invoices to the City Attorneys' Office to the attention of Kevin Reisch, DCA, by the 15th of each month for services rendered the previous month. Invoices shall include a distinct identification number. Both the amount invoiced for the billing period and the total amount then owed (the balance forward) shall be set forth. Invoices shall provide detailed billing information including, but not limited to, a detailed description of the service rendered, date of service, attorney time devoted to service, attorney name, billing rate, and total amount billed for each service. Invoices will also include a breakdown of all Disbursements by category of expense. A receipt for each category of expense must accompany the invoice to qualify for reimbursement by the Successor Agency. The parties agree that if the Successor Agency questions any item on an invoice, the Firm will provide all supporting information to substantiate the billing and will make any appropriate adjustments.

Media Inquiries

Media inquiries should be immediately communicated to the Office of the City Attorney.

EXHIBIT C

TIME SCHEDULE

Unless otherwise terminated, this Agreement shall be effective until completion of the Scope of Services or December 31, 2014, whichever is the earliest.

EXHIBIT D

INSURANCE

1. **Types of Insurance.** At all times during the term of this Agreement, the Law Firm shall maintain insurance coverage as follows:

   1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of one million dollars [$1,000,000] per occurrence and subject to an annual aggregate of two million dollars [$2,000,000] (consistent with the Law Firm's previous agreement for legal services with the former Redevelopment Agency of the City of San Diego, as amended). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

   1.2 Commercial Automobile Liability. For all of the Law Firm's automobiles including owned, hired and non-owned automobiles, the Law Firm shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of $1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

   1.3 Workers' Compensation. For all of the Law Firm's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, the Law Firm shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of $1 million of employers' liability coverage, and the Law Firm shall provide an endorsement that the insurer waives the right of subrogation against the City, the Successor Agency and their respective elected officials, officers, employees, agents and representatives.

   1.4 Professional Liability. For all of the Law Firm's employees who are subject to this Agreement, the Law Firm shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of $1 million per claim and $ 2 million annual aggregate. The Law Firm shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Services or termination of this Agreement whichever occurs last. The Law Firm agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's or the Successor Agency's exposure to loss.

2. **Deductibles.** All deductibles on any policy shall be the responsibility of the Law Firm and shall be disclosed to the Successor Agency at the time the evidence of insurance is provided.

3. Acceptability of Insurers.

3.1 Except for the State Compensation Insurance Fund, all insurance required by this Contract or in the Special General Conditions shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the Successor Agency.

3.2 The Successor Agency will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

4. Required Endorsements

The following endorsements to the policies of insurance are required to be provided to the Successor Agency before any work is initiated under this Agreement.

4.1 Commercial General Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City and the Successor Agency and their respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City or the Successor Agency and their respective elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City or the Successor Agency and their respective elected officials, officers, employees, agents and representatives shall be in excess of Law Firm's insurance and shall not contribute to it.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the Successor Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice

shall be addressed to the Successor Agency at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the Law Firm's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.2 Automobile Liability Insurance Endorsements

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City and the Successor Agency and their respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of the Law Firm.

CANCELLATION. Except as provided for under California Law, the policy or policies must be endorsed to provide that the Successor Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payments of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the Successor Agency at the address specified in Section 9.1 "Notices."

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that Law Firm's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

4.3 Worker's Compensation and Employer's Liability Insurance Endorsements

CANCELLATION. Except as provided for under California law, the policy or policies must be endorsed to provide that the Successor Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Such notice shall be addressed to the Successor Agency at the address specified in Section 9.1"Notices."

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City and the Successor Agency and their respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the Successor Agency.

5. **Reservation of Rights.** The Successor Agency reserves the right, from time to time, to review the Law Firm's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the Successor Agency. The Successor Agency will reimburse the Law Firm for the cost of the additional premium for any coverage requested by the Successor Agency in excess of that required by this Agreement without overhead, profit, or any other markup.

6. **Additional Insurance.** The Law Firm may obtain additional insurance not required by this Agreement.

7. **Excess Insurance.** All policies providing excess coverage to the City or the Successor Agency shall follow the form of the primary policy or policies including but not limited to all endorsements.

EXHIBIT E

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP) CONTRACTOR REQUIREMENTS

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I. City's Equal Opportunity Commitment. The City of San Diego (City) is strongly committed to equal opportunity for employees and subcontractors of professional service Consultants doing business with the City. The City encourages its Consultants to share this commitment. Prime Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer consulting opportunities to all eligible Subcontractors.

II. Nondiscrimination in Contracting Ordinance. All Consultants and professional service providers doing business with the City, and their Subcontractors, must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance,* San Diego Municipal Code Sections 22.3501 through 22.3517.

A. Proposal Documents to include Disclosure of Discrimination Complaints. As part of its bid or proposal, Consultant shall provide to the City a list of all instances within the past ten (10) years where a complaint was filed or pending against Consultant in a legal or administrative proceeding alleging that Consultant discriminated against its employees, Subcontractors, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

B. Contract Language. The following language shall be included in contracts for City projects between the Consultant and any Subcontractors, vendors, and suppliers:

Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Consultant shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

C. Compliance Investigations. Upon the City's request, Consultant agrees to provide to the City, within sixty (60) calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance,* Municipal Code Sections 22.3501 through 22.3517. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance.* Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the *Ordinance.*

III. Equal Employment Opportunity. Consultants shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Consultants shall submit with their proposal a *Work Force Report* for approval by the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP).

A. Work Force Report. If based on a review of the *Work Force Report* (Attachment AA) submitted an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, then the Consultant will also be required to submit an *Equal Employment Opportunity* (EEO) *Plan* to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval

B. Equal Employment Opportunity Plan. If an *Equal Employment Opportunity Plan* is required, it must include at least the following assurances that:

1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Consultant's employees are assigned to work;

2. A responsible official is designated to monitor all employment related activity to ensure the Consultant's EEO Policy is being carried out and to submit reports relating to EEO provisions;

3. Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;

4. The Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;

5. The Consultant discusses its EEO Policy Statement with Subcontractors with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;

6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from Subcontractors, Consultant associations and other business associations;

7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;

8. The Consultant disseminates its EEO Policy to union and community organizations;

9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;

10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;

11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;

12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;

13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;

14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;

15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;

16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;

17. The Consultant establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and

18. The Consultant is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a Consultant association, Consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

IV. Equal Opportunity Contracting. Prime Consultants are encouraged to take positive steps to diversify and expand their Subcontractor solicitation base and to offer contracting opportunities to all eligible Subcontractors. To support its Equal Opportunity Contracting commitment, the City has established a voluntary *Subcontractor participation level.*

A. Subcontractor Participation Level

1. Projects valued at $25,000 or more have a voluntary Subcontractor Participation Level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE) or Other Business Enterprise (OBE) level.

2. While attainment of the 15% Subcontractor Participation Level goal is strictly voluntary, the City encourages diversity in your outreach and selection efforts. Historical data indicates that of the overall 15% goal, 25% to 30% Disadvantaged Business Enterprise (DBE) and 1% to 3% Disabled Veteran Business Enterprise (DVBE) participation is attainable. The remaining percentages may be allocated to Other Business Enterprises (OBE). Participation levels may be used as a tiebreaker in cases of an overall tie between two or more firms.

B. Contract Activity Reports. To permit monitoring of the successful Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment BB) reflecting work performed by Subcontractors shall be submitted quarterly for any work covered under an executed contract.

V. Demonstrated Commitment to Equal Opportunity. The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.

A. Consultants are required to submit the following information with their proposals:

19. Outreach Efforts. Description of Consultant's outreach efforts undertaken on this project to make subcontracting opportunities available to all interested and qualified firms.

20. Past Participation Levels. Listing of Consultant's Subcontractor participation levels achieved on all private and public projects within the past three (3) years. Include name of project, type of project, value of project, Subcontractor firm's name, percentage of Subcontractor firm's participation, and identification of Subcontractor firm's ownership as a certified Small Business, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.

21. Equal Opportunity Employment. Listing of Consultant's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Consultant's *Workforce Report* as compared to the County's Labor Force Availability.

22. Community Activities. Listing of Consultant's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

B. In accordance with the City's Equal Opportunity Commitment, EOCP will evaluate the **Consultant's** demonstrated commitment to equal opportunity including the following factors:

23. Outreach Efforts. Consultant's outreach efforts undertaken and willingness to make meaningful subcontracting opportunities available to all interested and qualified firms on this project.

24. Past Participation Levels. Consultant's Subcontractor participation levels achieved on all private and public projects within the past three (3) years.

25. Equal Opportunity Employment. Consultant's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.

26. Community Activities. Consultant's current community activities.

VI. List of Subcontractors. Consultants are required to submit a *Subcontractor List* with their proposal.

A. Subcontractors List. The *Subcontractor List* (Attachment CC) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Dollar Amount of Proposed Subcontract, Certification Status and Where Certified for each proposed Subcontractor.

27. Subcontractors must be named on the *Subcontractors List* if they receive more than one-half of one percent (0.5%) of the Prime Consultant's fee.

B. Commitment Letters. Consultant shall also submit Subcontractor *Commitment Letters* on Subcontractor's letterhead, no more than one page each, from all proposed Subcontractors to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

VII. Definitions. Certified **"Minority Business Enterprise" (MBE)** means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups. Certified **"Women Business Enterprise" (WBE)** means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified **"Disadvantaged Business Enterprise" (DBE)** means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified **"Disabled Veteran Business Enterprise" (DVBE)** means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

"Other Business Enterprise" (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

VIII. Certification.

A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:

28. Current certification by the City of San Diego as MBE, WBE, or DBE;

29. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
30. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.

B. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business (916) 322-5060.

IX. List of Attachments.

AA. Work Force Report
BB. Subcontractors List
CC. Contract Activity Report

ATTACHMENT AA
City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
1200 Third Avenue • Suite 200 • San Diego, CA 92101
Phone: (619) 236-6000 • Fax: (619) 235-5209

WORK FORCE REPORT
LOCAL WORK FORCE

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report*.

CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company: _____

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): _____

City _____ County _____ State _____ Zip _____

Telephone Number: ( ) _____ FAX Number: ( ) _____

Name of Company CEO: _____

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City _____ County _____ State _____ Zip _____

Telephone Number: ( ) _____ FAX Number: ( ) _____

Type of Business: _____ Type of License: _____

The Company has appointed: _____

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: _____

Telephone Number: ( ) _____ FAX Number: ( ) _____

For Firm's: ☐ San Diego Work Force and/or ☐ Managing Office Work Force

I, the undersigned representative of _____
(Firm Name)

_____ , _____ hereby certify that information provided
(County) *(State)*

herein is true and correct. This document was executed on this _____ day of _____, 200____ .

_____ _____
(Authorized Signature) *(Print Authorized Signature Name)*

ATTACHMENT AA
WORK FORCE REPORT - Page 2

NAME OF FIRM: _____ DATE: _____

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

(1) African-American, Black
(2) Latino, Hispanic, Mexican-American, Puerto Rican
(3) Asian, Pacific Islander
(4) American Indian, Eskimo
(5) Filipino
(6) Caucasian
(7) Other ethnicity; not falling into other groups

OCCUPATIONAL CATEGORY	(1) African-American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN														

GRAND TOTAL ALL EMPLOYEES	

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

ATTACHMENT BB
SUBCONTRACTORS LIST

INFORMATION REGARDING SUBCONTRACTORS PARTICIPATION:

a. Subcontractor's List shall include name and complete address of all Subcontractors who will receive more than one half of one percent (0.5%) of the Prime Consultant's fee.

b. Consultant shall also submit Subcontractor commitment letters on Subcontractor's letterhead, no more than one page each, from Subcontractors listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

c. Subcontractors shall be used for scope of work listed. No changes to this Subcontractors List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONTRACTORS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	* MBE/ WBE/DBE/ DVBE/OBE	** WHERE CERTIFIED

* *For information only.* As appropriate, Consultant shall identify Subcontractors as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

** *For information only.* As appropriate, Consultant shall indicate if Subcontractor is certified by: City of San Diego CITY State of California Department of Transportation CALTRANS

ATTACHMENT CC
CONTRACT ACTIVITY REPORT

Consultants are required by contract to report Subcontractor activity in this format. Reports shall be submitted via the Project Manager to the *Equal Opportunity Contracting Program (EOCP)* no later than thirty (30) days after the close of each quarter.

PROJECT: _____ **PRIME CONTRACTOR:**_____

CONTRACT AMOUNT: _____ **INVOICE PERIOD:**_____ **DATE:**

Include Additional Services Not-to-Exceed Amount

SubContractor	Indicate MBE, WBE, DBE, DVBE or OBE	Current Period		Paid to Date		Original Commitment	
		Dollar Amount	% of Contract	Dollar Amount	% of Contract	Dollar Amount	% of Contract
Prime Contractor Total:							
Contract Total:							

Completed by: _____

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-16

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY AND THE LAW OFFICE OF DON DETISCH FOR LEGAL SERVICES AND AN EXPENDITURE NOT TO EXCEED $200,000 FOR THE AGREEMENT

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego; and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the San Diego City Attorney has determined that additional legal expertise and personnel are necessary for particular legal matters of the Successor Agency related to the properties located at 528-542 14th Street (Hon Property) and 1343-1345 Market Street (Lafornara Property); and

WHEREAS, the Law Office of Don Detisch (Don Detisch) has provided these services to the Former RDA since 2005 pursuant to former legal services agreements; and

WHEREAS, Don Detisch is currently providing legal services to the Successor Agency in connection with litigation related to the Hon Property and the Lafornara Property; and

WHEREAS, the funds available under the existing agreement for legal services with Don Detisch have been exhausted; and

WHEREAS, the Successor Agency now desires to retain the legal services of Don Detisch under the terms of a new as-needed agreement with compensation not to exceed $200,000.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Agreement for Legal Services between the Successor Agency and the Law Office of Don Detisch (Agreement) is hereby approved.

2. The expenditure of an amount not to exceed $200,000 by the Successor Agency for payments required by the Agreement is hereby authorized.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on July ___, 2012.

_____

Chair, Oversight Board