

STAFF REPORT

CITY OF SAN LEANDRO SUCCESSOR AGENCY OVERSIGHT BOARD

DATE: October 31, 2012
TO: Successor Agency Oversight Board
FROM: Cynthia Battenberg, Business Development Manager
SUBJECT: Oversight Board Adoption of Resolution Directing the Successor Agency to Enter into a Legal Services Agreement for Counsel to the Oversight Board

By direction of the Oversight Board at the October 10, 2012 meeting, staff in coordination with the Successor Agency's legal counsel (Stephanie Downs, Meyers Nave) requested proposals for legal services to the City of San Leandro's Oversight Board (OB).

Three proposals were received and interviews were held with the following three firms:

- Michelle Sexton, Rosales Law partners
- Craig Labadie, Law Offices of Craig Labadie
- Paula Crow and Laurie Gustafson, Stein & Lubin, LLP

Stephanie Downs, myself and Surlene Grant, by request of Chair Chan, represented the OB at the interviews. The law firms were evaluated on the following criteria:

- Relevant experience – knowledge of redevelopment, post-redevelopment and oversight board law and experience advising public bodies.
- Perceived role with respect to Successor Agency/Oversight Board staff, Successor Agency legal counsel and the Oversight Board.
- Experience with the State Department of Finance.
- Response to a hypothetical situation.
- Billing rates.

Mr. Labadie serves as legal counsel to OBs in Belmont, Foster City, Menlo Park, Millbrae, Pacifica, Redwood City, San Bruno, San Ramon and South San Francisco and provides contract City Attorney services to the City of Albany. Mr. Labadie's billing rate is \$215 per hour. Mr. Labadie's reference checks, which included conversations with the City Attorney to a City/Successor Agency where he serves the OB, the City Manager where he provides contract services as well as an OB member for a board he serves, were all excellent. Based on his current experience, knowledge of AB x1 26 and AB 1484, as well as his reasonable rates, a recommendation is before the Oversight Board to have Craig Labadie serve as legal Counsel to the OB.

The legal services agreement addresses the scope of work, compensation, confidentiality, insurance and indemnification requirements and includes a seven day advance notice provision to terminate the agreement.

The OB does not have the legal ability to enforce an agreement. Therefore, it is recommended that the OB direct the Successor Agency to enter into the Legal Services Agreement on its behalf. The resolution before you directs the Successor Agency to enter into a legal services agreement with Craig Labadie on the OB's behalf and directs the Successor Agency to list the estimated costs to be paid under the agreement on an updated ROPS for the Successor Agency.

RESOLUTION NO. 2012-008 OB

**RESOLUTION OF THE OVERSIGHT BOARD
FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE
CITY OF SAN LEANDRO**

**DIRECTING THE SUCCESSOR AGENCY TO ENTER INTO A LEGAL SERVICES
AGREEMENT FOR COUNSEL TO THE OVERSIGHT BOARD**

WHEREAS, pursuant to Resolution 2012-001, adopted by the City Council of the City of San Leandro on January 9, 2012, the City of San Leandro agreed to serve as the Successor Agency to the Redevelopment Agency of the City of San Leandro (the "Successor Agency") commencing upon dissolution of the Redevelopment Agency on February 1, 2012 pursuant to Assembly Bill x1 26 (the "Redevelopment Dissolution Act"); and

WHEREAS, under the Redevelopment Dissolution Act, each Successor Agency shall establish an Oversight Board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

WHEREAS, the Successor Agency has established an Oversight Board pursuant to the Redevelopment Dissolution Act; and

WHEREAS, the Oversight Board directed its staff ("Staff") to identify a qualified attorney to represent the Oversight Board independently from the Successor Agency; and

WHEREAS, Staff created a committee consisting of certain Staff and an Oversight Board Member, which requested and reviewed qualifications to select qualified legal counsel for the Oversight Board; and

WHEREAS, after reviewing qualifications and interviewing three candidates, the committee recommends Craig Labadie ("Attorney") to provide legal services to the Oversight Board; and

WHEREAS, Attorney is qualified in the area of the California Redevelopment Law, the Redevelopment Dissolution Act, general municipal law, and other federal and state laws relating to state and local government law and possesses professional skills with respect to interpreting such laws and representing the Oversight Board as legal counsel relating to the Redevelopment Dissolution Act; and

WHEREAS, Health and Safety Code section 34179(n) authorizes the Oversight Board to direct a successor agency to provide additional legal advice that what was given by successor agency staff; and

WHEREAS, the Oversight Board desires to direct the Successor Agency to enter into an agreement for legal services to provide additional legal advice to the Oversight Board; and

WHEREAS, Staff has attached a draft Professional Services Agreement (“Agreement”) for Oversight Board review; and

WHEREAS, under the Redevelopment Dissolution Act, the costs to be funded by a successor agency must be identified on the Recognized Obligation Payment Schedule (“ROPS”) for each six-month fiscal period, and reviewed by State Department of Finance (“DOF”) before funds will be disbursed to the Successor Agency by the County Auditor-Controller from the Redevelopment Property Tax Trust Fund (“RPTTF”); and

WHEREAS, the City of San Leandro general fund is neither available nor adequate and is not and shall not be expended or committed, expressly or impliedly, by the Oversight Board entering into this Legal Services Agreement with Attorney; and

WHEREAS, the sole source of funds available to pay for legal services provided by Attorney to the Oversight Board is and shall be limited to funds allocated to the Successor Agency an item listed on a ROPS; and

NOW THEREFORE, BE IT HEREBY RESOLVED by the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of San Leandro that it hereby:

1. Recognizes that the foregoing recitals are true and correct.
2. Directs the Successor Agency to enter into the Agreement, substantially in the form attached as Exhibit A with such changes as may be agreed to by the Chair of the Oversight Board in consultation with Staff and Successor Agency Counsel.
3. Authorizes its Chair to execute the approval line of the Agreement with Attorney for legal services to the Oversight Board.
4. Authorizes and directs the Successor Agency to list the estimated costs to be paid under the Agreement on an updated ROPS for the Successor Agency.

PASSED AND ADOPTED AT A REGULAR MEETING OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN LEANDRO ON OCTOBER 31, 2012 BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Secretary

1989556.1

Chair

**LEGAL SERVICES AGREEMENT BETWEEN
THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE
CITY OF SAN LEANDRO AND CRAIG LABADIE**

This Agreement (this “**AGREEMENT**”) is made and entered into on November 1, 2012, by and between the Successor Agency to the Redevelopment Agency of the City of San Leandro (the “**SUCCESSOR AGENCY**”), organized and existing under the provisions of AB x1 26, enacted June 29, 2011 (“**Redevelopment Dissolution Act**”), and Craig Labadie, an attorney licensed to practice law in the State of California (“**ATTORNEY**”). **SUCCESSOR AGENCY** and **ATTORNEY** are collectively referred to herein as “**PARTIES**.”

THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings and intentions:

WHEREAS, pursuant to Resolution 2012-001, adopted by the City Council of the City of San Leandro on January 9, 2012, the City of San Leandro agreed to serve as the Successor Agency commencing upon dissolution of the Redevelopment Agency on February 1, 2012 pursuant to Assembly Bill x1 26 (the “**Redevelopment Dissolution Act**”); and

WHEREAS, under the Redevelopment Dissolution Act, each Successor Agency shall establish an Oversight Board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

WHEREAS, the Successor Agency has established an Oversight Board (the “**OVERSIGHT BOARD**”) pursuant to the Redevelopment Dissolution Act; and

WHEREAS, the **OVERSIGHT BOARD** directed its staff (“**Staff**”) to identify a qualified attorney to represent the **OVERSIGHT BOARD** independently from the Successor Agency; and

WHEREAS, Staff created a committee consisting of certain Staff and an **OVERSIGHT BOARD** Member, which requested and reviewed qualifications to select qualified legal counsel for the **OVERSIGHT BOARD**; and

WHEREAS, after reviewing qualifications and interviewing three candidates, the committee recommends **ATTORNEY** to provide legal services to the **OVERSIGHT BOARD**; and

WHEREAS, **ATTORNEY** is qualified in the area of the California Redevelopment Law, the Redevelopment Dissolution Act, general municipal law, and other federal and state laws relating to state and local government law and possesses professional skills with respect to interpreting such laws and representing the **OVERSIGHT BOARD** as legal counsel relating to the Redevelopment Dissolution Act; and

WHEREAS, Health and Safety Code section 34179(n) authorizes the OVERSIGHT BOARD to direct a successor agency to provide additional legal advice that what was given by successor agency staff; and

WHEREAS, the OVERSIGHT BOARD directed the Successor Agency to enter into this AGREEMENT for legal services to provide additional legal advice to the OVERSIGHT BOARD by Resolution on October 31, 2012.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties herein contained, the parties hereto agree as follows:

SECTION 1. **Effective Date.** The Effective Date of this Agreement is November 1, 2012.

SECTION 2. **Term.** The term of this AGREEMENT shall be for one (1) year from the Effective Date.

SECTION 3. **Scope of Work.** SUCCESSOR AGENCY engages ATTORNEY to provide legal advice and representation to the OVERSIGHT BOARD as described in the Scope of Work attached hereto as Exhibit A and fully incorporated into this AGREEMENT.

SECTION 4. **Compensation.** ATTORNEY shall be compensated at an Hourly Rate and for Reimbursable Expenses as set forth in this Section 3.

4.1. **Hourly Rate.** ATTORNEY shall be compensated on an hourly basis for services rendered under Section 2, at the rate of \$215 per hour (the "**Hourly Rate**"). Time will be billed in 1/10 of an hour increments. Travel time shall be charged and paid at Hourly Rate. Charges for word processing, secretarial assistance and other overhead are assumed to be captured in the Hourly Rate and will not be compensated.

4.2. **Reimbursable Expenses.** ATTORNEY shall be reimbursed for actual and reasonable out-of-pocket expenses (the "**Reimbursable Expenses**"), including photocopy/duplication charges and costs (not to exceed \$0.25 per page), research-related charges, filing fees, telephone charges, parking, and tolls. No other expenses will be authorized for reimbursement unless approved in advance in writing by SUCCESSOR AGENCY.

4.3. **Rates for Additional Personnel.** Additional hourly rates for any and all services provided by additional personnel require advance SUCCESSOR AGENCY approval.

4.4. **Invoices and Payment.**

4.4.1. ATTORNEY shall submit monthly invoices to SUCCESSOR AGENCY for all legal services rendered pursuant to this AGREEMENT at the address listed for the SUCCESSOR AGENCY in Section 15.11 below.

4.4.2. SUCCESSOR AGENCY, acting as the Successor Agency to the City of San Leandro Redevelopment Agency and as Housing Successor, will issue payment to ATTORNEY within thirty (30) days after receipt of each invoice, for services satisfactorily performed, subject to such work being in compliance both with the Scope of Work as set forth in Section 3 and Exhibit A of this Agreement and within the budget established by the SUCCESSOR AGENCY for said services.

SECTION 5. Confidential Communications and Information. SUCCESSOR AGENCY, is the contracting entity under this Agreement. SUCCESSOR AGENCY and ATTORNEY understand and agree that OVERSIGHT BOARD is the client of ATTORNEY for the purposes of confidential client communications. Confidential client communications between the OVERSIGHT BOARD and ATTORNEY are not to be shared with SUCCESSOR AGENCY. All documents, communications or other information developed or received by or for ATTORNEY in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by OVERSIGHT BOARD, or as required by law.

SECTION 6. Termination. Either Party may terminate this AGREEMENT at any time with or without cause with seven (7) days advance written notice; provided however, that the SUCCESSOR AGENCY must obtain consent of the OVERSIGHT BOARD for such termination. Upon receiving such notice, ATTORNEY shall cease providing services under this AGREEMENT and cooperate in the orderly transfer of all files and records to SUCCESSOR AGENCY or OVERSIGHT BOARD. SUCCESSOR AGENCY agrees to pay ATTORNEY for all legal services rendered by ATTORNEY plus all Reimbursable Expenses incurred by ATTORNEY in the course of representing the OVERSIGHT BOARD up to the time of termination in accordance with the requirement set forth in Section 4 of this AGREEMENT. SUCCESSOR AGENCY may condition any such payment upon the return by ATTORNEY of any confidential correspondence or records to the OVERSIGHT BOARD and any non-confidential correspondence or records to the SUCCESSOR AGENCY to hold for use as necessary by the OVERSIGHT BOARD.

SECTION 7. Standard of Performance. ATTORNEY represents to SUCCESSOR AGENCY that the services shall be performed in an expeditious manner and with the degree of skill and care that is in conformance with generally accepted professional standards prevailing at the time work is performed.

SECTION 8. Performance by Attorney. ATTORNEY shall not employ other Attorneys or contractors without the prior written approval of the SUCCESSOR AGENCY. Unless otherwise expressly agreed by the SUCCESSOR AGENCY, ATTORNEY shall remain responsible for the quality and timeliness of performance of the services, notwithstanding any permitted or approved delegation hereunder.

SECTION 9. Ownership and Maintenance of Documents. All documents furnished by ATTORNEY pursuant to this AGREEMENT are instruments of ATTORNEY'S services

in respect to any individual project. They are not intended nor represented to be suitable for reuse by others on extensions of this project or on any other project. Any reuse without specific written verification and adoption by ATTORNEY for the specific purposes intended will be at user's sole risk and without liability or legal exposure and expenses to ATTORNEY, including attorney's fees arising out of such unauthorized reuse. ATTORNEY'S records pertaining to work performed under this AGREEMENT shall be given to SUCCESSOR AGENCY at the completion of the work.

SECTION 10. Conflict of Interest. ATTORNEY shall avoid any conflict of interest in the performance of this AGREEMENT. ATTORNEY represents that the ATTORNEY has no existing conflict of interest in representing OVERSIGHT BOARD and will not acquire any such interest, which could interfere with the performance of services required under this AGREEMENT.

SECTION 11. Independent Contractor. In assuming and performing the services, ATTORNEY, and any employees, agents or subcontractors providing services under this AGREEMENT, are independent contractors and shall not be eligible for any benefits, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS"), which the SUCCESSOR AGENCY may provide its employees, except as expressly provided for in the AGREEMENT. Without limiting the generality of the foregoing, ATTORNEY acknowledges and agrees that ATTORNEY is solely responsible for the payment of all applicable employee compensation and benefits and all applicable local, state and federal business and payroll taxes for all persons providing services to SUCCESSOR AGENCY pursuant to this AGREEMENT. Except as SUCCESSOR AGENCY may expressly specify in writing, ATTORNEY shall have not authority, express or implied, to act on behalf of SUCCESSOR AGENCY in any capacity to act as an agent or bind the SUCCESSOR AGENCY to any obligation and ATTORNEY shall have responsibility for and control over the means of providing services under this AGREEMENT.

SECTION 12. Insurance Requirements. At the sole expense of ATTORNEY and without reimbursement, ATTORNEY shall obtain and maintain all insurance specified in this Section 11:

12.1. **Workers' Compensation.** If ATTORNEY employs any person, whether directly or indirectly, ATTORNEY shall obtain and maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

12.2. **Commercial General Liability Insurance.** Commercial general liability and property damage insurance that provides minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

- 12.3. **Automobile Insurance.** Automobile insurance that covers any and all vehicles used to perform under this AGREEMENT, with a minimum limit of one million dollars (\$1,000,000).
- 12.4. **Malpractice/Professional Errors and Omissions Insurance.** Malpractice/Professional Errors and Omissions Insurance with minimum limits of two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) aggregate.
- 12.5. **All Policies Requirements.** Prior to commencing work under this AGREEMENT, ATTORNEY shall provide evidence satisfactory to the SUCCESSOR AGENCY that all insurance required by this AGREEMENT is in full force and effect in the form required hereby. ATTORNEY agrees shall not cancel or reduce the limits of such insurance without thirty (30) days prior written notice to SUCCESSOR AGENCY.

SECTION 13. Indemnification. ATTORNEY shall indemnify, defend with counsel reasonably acceptable to the SUCCESSOR AGENCY and the OVERSIGHT BOARD, and hold harmless the SUCCESSOR AGENCY and the OVERSIGHT BOARD, and their respective officials, board members, officers, employees, agents and volunteers from and against all losses, liabilities claims, demands, suits, actions, damages, expenses, penalties, fines, costs (including, without limitation, costs and fees of litigation), judgments, and causes of action of every nature arising out of or in connection with any acts or omissions by ATTORNEY, its officers, officials, agents, and employees, except as caused by the sole or gross negligence by SUCCESSOR AGENCY or the OVERSIGHT BOARD.

SECTION 14. Amendment. This AGREEMENT may be amended, modified, or changed by the PARTIES subject to mutual consent by execution of a written amendment executed by authorized by representatives of SUCCESSOR AGENCY and ATTORNEY and as consented to by the OVERSIGHT BOARD.

SECTION 15. Miscellaneous Provisions.

- 15.1. **Assignment and Subcontracting.** ATTORNEY may not assign this AGREEMENT or any interest therein without the prior written approval of the SUCCESSOR AGENCY. ATTORNEY shall not subcontract any portion of the performance contemplated and provided for herein, without prior written approval of the SUCCESSOR AGENCY.
- 15.2. **Compliance with Laws.** ATTORNEY shall comply with all applicable Federal, State, and local laws, rules, and regulations, and shall obtain and maintain all applicable licenses and permits for the conduct of its business and the performance of the services.

- 15.3. **No Waiver.** The waiver of any breach of a specific provision of this AGREEMENT does not constitute waiver of any other breach of that provision or of any other provision of this AGREEMENT.
- 15.4. **Severability.** Each provision of this AGREEMENT is severable, so that if one portion is found to be legally invalid, the remaining portion shall remain in effect.
- 15.5. **Financial Records.** Records of ATTORNEY'S Hourly Rates and Reimbursable Expenses pertaining work performed under this AGREEMENT shall be promptly made available to OVERSIGHT BOARD and/or SUCCESSOR AGENCY if and when requested.
- 15.6. **Entire Agreement.** This AGREEMENT, including Exhibit A attached hereto and incorporated herein, is the entire agreement of between the PARTIES with respect to the subject matter of this AGREEMENT and supersedes all prior oral or written negotiations, representations or agreements.
- 15.7. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 15.8. **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 15.9. **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, and Contractor's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and the Contractor's Proposal, the Exhibits shall control.
- 15.10. **Construction of Agreement.** Each party has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 15.11. **Notices.** All notices required hereunder shall be in writing and mailed postage prepaid by Certified or Registered mail, return receipt requested, or by personal delivery to the SUCCESSOR AGENCY'S address as shown below, or such other places as SUCCESSOR AGENCY or ATTORNEY may, from time to time, respectively, designate in a written notice given to the other. Notice shall be deemed received three (3) days after the date of the mailing thereof or upon personal delivery.

To SUCCESSOR AGENCY:

Chris Zapata, Executive Director
835 E. 14th Street
San Leandro, CA 94577-3767

With copies to:

Jayne Williams
Successor Agency Counsel
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94067

To OVERSIGHT BOARD
Business Development Manager
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577-3767

To ATTORNEY:

Craig Labadie
50 Tara Road
Orinda, CA 94563
Phone: (925) 250-5424
FAX: (925) 253-0891
E-mail: labadielaw@gmail.com

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT in one or more duplicate originals as of the date and year first written above.

SUCCESSOR AGENCY

ATTORNEY

Chris Zapata, Executive Director

Craig Labadie

Attest:

Marian Handa, Agency Secretary

Approved as to Fiscal Authority:

David Baum, Finance Director
Account Number: _____

LEGAL SERVICES AGREEMENT
BETWEEN SUCCESSOR AGENCY
TO THE REDEVELOPMENT AGENCY OF
OF SAN LEANDRO AND CRAIG LABADIE

Approved as to Form:

Jayne W. Williams, Successor Agency Counsel

CONSENTED TO:

Chair, Oversight Board

1989211.2

EXHIBIT A
SCOPE OF WORK

ATTORNEY shall serve as the primary legal advisor to the OVERSIGHT BOARD as follows:

1. Provide legal advice concerning the implementation of the Redevelopment Dissolution Act, the powers and duties of the OVERSIGHT BOARD under the Redevelopment Dissolution Act, and OVERSIGHT BOARD compliance with the requirements of the Brown Act, Public Records Act and Political Reform Act in the performance of such powers and duties;
2. Attend OVERSIGHT BOARD meetings, as requested, and provide advice related to the laws, statutes and any other legal issues that arise in connection with OVERSIGHT BOARD meetings, as necessary;
3. Provide legal advice regarding OVERSIGHT BOARD member duties, responsibilities and obligations;
4. Provide legal advice and consultation on issues and actions appearing before, or anticipated to appear before the OVERSIGHT BOARD;
5. Provide legal advice and consultation to the OVERSIGHT BOARD regarding its relationship to and role with the Successor Agency;
6. Provide legal opinions as requested by the OVERSIGHT BOARD;
7. Ensure that the OVERSIGHT BOARD meetings and agendas and all supporting documents comply with the applicable provisions of California law, including, without limitation, the Brown Act; and
8. Perform other duties as requested by the OVERSIGHT BOARD.

ATTORNEY'S services under this AGREEMENT shall not include lobbying services.

PLEASE NOTE THAT THE PRECEDING IS NOT INTENDED TO BE AN ALL-INCLUSIVE LISTING OF ALL OF THE SERVICES ATTORNEY SHALL PROVIDE TO THE OVERSIGHT BOARD BUT IS INTENDED TO BE A REPRESENTATIVE LISTING OF ATTORNEY DUTIES AND TASKS UNDER THIS AGREEMENT.

1989211.2