

COUNTY OF KINGS

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into as of the 9th day of May, 2012, by and between the Oversight Board for Successor Agency, (hereinafter "County") and McCormick, Kabot, Jenner & Lew (hereinafter "Contractor").

RECITALS

WHEREAS, County requires services related to Legal Services for Oversight Board and,

WHEREAS, Contractor is qualified to perform such services;

NOW, THEREFORE, County and Contractor mutually agree as follows:

1. SCOPE OF SERVICES

County hereby engages Contractor, and Contractor agrees to perform the services described in the response to Request for Proposal "Legal Services for Redevelopment Agency Oversight Board" attached as **Exhibit A**.

2. COMPENSATION

A. Hourly compensation as proposed in Exhibit A attached;
\$175/hourly plus required copies at \$0.20/page and mileage at IRS current and published rate. All other services not listed in Exhibit A are subject to agreement by both parties prior to commencement and/or billing.

B. Consultant shall not be entitled to nor receive from County any additional consideration, compensation or other remuneration for services rendered under this Agreement.

3. METHOD OF PAYMENT

Upon submission of an invoice by Contractor, and upon approval of the County's representative, County shall pay Contractor monthly in arrears for fees and expenses incurred the prior month, up to the maximum amount provided for in paragraph 2. Each invoice must include a description of services rendered, to whom, date of service and the charges according to the agreed upon method.

4. CLOSING OUT

Contractor is responsible for County's receipt of a final claim for payment by (DATE), or 180 days after expiration of this Agreement. County shall promptly pay Contractor's final claim for payment providing Contractor has provided all obligations undertaken pursuant to this Agreement. If Contractor has failed to perform all such outstanding obligations, County shall withhold from Contractor's final claim for payment the amount of such services owed by Contractor.

5. TIME

Time for performance of this Agreement is of the essence.

6. TIME OF PERFORMANCE

A. This Agreement is for a one (1) year period, with the option, upon mutual agreement, to extend for four (4) additional one (1) year periods.

B. Work will not begin, nor claims paid for services under this Agreement until all Certificates of Insurance, a Signing Authority Form, By-Laws, Business and Professional Licenses/Certificates, Verification of Non-Profit status, IRS ID number or other applicable licenses or certificates, as required, are on file with the Department's representative.

7. MODIFICATION AND TERMINATION

This Agreement may be modified only by a written amendment signed by the parties.

This Agreement may be terminated by County or Contractor, at any time, with good cause, upon 30 days written notice to the other party.

Following termination, Contractor shall be reimbursed for all expenditures made in good faith that are due and unpaid at the time of termination not to exceed the maximum amount payable under this Agreement.

8. WARRANTY

County relies upon Contractor's professional ability and training as a material inducement to enter into this Agreement. Contractor warrants that it will perform its work according to generally accepted professional practices and standards and the requirements of applicable federal, state and local laws. County's acceptance of Contractor's work shall not constitute a waiver or release of Contractor from professional responsibility.

Contractor further warrants that it possesses current valid appropriate licensure, including, but not limited to, drivers license, professional license, certificate of tax-exempt status, or permits, required to perform the work under this Agreement.

9. STANDARD OF PERFORMANCE

Contractor warrants that it will, at all times utilizing its ability, experience and talent, faithfully, industriously and professionally perform to County's reasonable satisfaction.

10. DEFAULT

A. If Contractor defaults in its performance, County shall promptly notify Contractor in writing. If Contractor fails to cure a default within 10 days after notification or if the default requires more than 10 days to cure and Contractor fails to commence to cure the default within 10 days after notification, then Contractor's failure shall terminate this Agreement.

B. Alternatively, County may elect to cure the default and any expense incurred shall be payable by Contractor to County.

C. If this Agreement is terminated because of Contractor's default, County shall be entitled to recover from Contractor all damages allowed by law.

11. INSURANCE

A. Without limiting Contractor's obligation to indemnify County, Contractor shall maintain the following insurance during the term of this Agreement:

1. Comprehensive general liability insurance written on an occurrence basis for all activities of Contractor and its subcontractors arising out of or in connection with this Agreement, written on a Comprehensive General Liability form including, but not limited to, premises and operations, independent contractor, products and completed operations, contractual liability and personal injury, in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence and in the aggregate.

2. Automobile liability insurance covering bodily injury and property damage for all activities of Contractor arising out of or in connection with this Agreement, including coverage for hired and non-owned vehicles, in an amount no less than three hundred thousand dollars (\$300,000) combined single limit for each occurrence.

3. As required by the Labor Code of the State of California, Worker's Compensation insurance, for Contractor and employees of Contractor. All Worker's Compensation policies shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days prior notice to Kings County in writing."

B. Each required comprehensive general liability policy shall be endorsed with the following specific language:

1. The County of Kings, its officers, agents and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

2. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies have been issued to each insured.

3. The insurance provided herein is primary and no insurance held or owned by the County of Kings shall be called upon to contribute to a loss.

4. The coverage provided by this policy shall not be reduced or canceled without thirty (30) days written notice to the County of Kings.

C. This Agreement shall be of no force or effect until Contractor provides proof of appropriate insurance to Risk Management and the department's Contract Manager.

12. INDEMNIFICATION

A. Contractor will indemnify, hold harmless and assume the defense of, the County of Kings, its officers, employees, agents and elective and appointive boards from all claims, losses, damages, including property damages, personal injury, death and liability of every kind, directly or indirectly arising from Contractor's negligent acts, errors or omissions or other wrongful conduct in its operations or from any persons directly or indirectly employed by, or acting as agent for, Contractor, excepting the active negligence or willful misconduct of the County of Kings. This indemnification shall extend to claims, losses, damages, injury and liability for injuries occurring after completion of Contractor's services, as well as during the progress of rendering such services.

B. Acceptance of insurance required by this Agreement does not relieve Contractor from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by Contractor's operations regardless of whether any insurance is applicable or not.

13. INDEPENDENT CONTRACTOR

A. Contractor is an independent contractor and not an agent, officer or employee of County. The parties mutually understand that this Agreement is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

B. Contractor shall have no claim against County for employee rights or benefits including, but not limited to seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, retirement benefits, Social Security, disability, Workers' Compensation, unemployment insurance benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

C. Contractor is solely obligated to pay all applicable taxes, deductions and other obligations including, but not limited to, federal and state income taxes, withholding, Social Security, unemployment, disability insurance, Workers' Compensation and Medicare payments.

D. Contractor shall indemnify and hold County harmless from any liability which County may incur because of Contractor's failure to pay such obligations.

E. As an independent contractor, Contractor is not subject to the direction and control of County except as to the final result contracted for under this Agreement. County may not require Contractor to change its manner of doing business, but may require redirection of efforts to fulfill this Agreement.

F. Contractor may provide services to others during the same period Contractor provides service to County under this Agreement.

G. Any third persons employed by Contractor shall be under Contractor's exclusive direction, supervision and control. Contractor shall determine all conditions of employment including hours, wages, working conditions, discipline, hiring and discharging or any other condition of employment.

H. As an independent contractor, Contractor shall indemnify and hold County harmless from any claims that may be made against County based on any contention by a third party that an employer-employee relationship exists under this Agreement.

I. Contractor, with full knowledge and understanding of the foregoing, freely, knowingly, willingly and voluntarily waives the right to assert any claim to any right or benefit or term or condition of employment insofar as they may be related to or arise from compensation paid hereunder.

14. RESPONSIBILITIES OF CONTRACTOR

A. Contractor possesses the requisite skills necessary to perform the work under this Agreement and County relies upon such skills. Contractor pledges to perform its work skillfully and professionally. County's acceptance of Contractor's work does not constitute a release of Contractor from its professional responsibility.

B. Contractor verifies that it has reviewed the scope of work to be performed under this Agreement and agrees that in its professional judgment, the work can and shall be completed for costs within the maximum amount set forth in this Agreement.

C. To fully comply with the terms and conditions of this Agreement, Contractor shall:

1. Establish and maintain a system of accounts for budgeted funds that complies with generally accepted accounting principles for government agencies. Contractor shall document all costs by maintaining complete and accurate records of all financial transactions associated with this Agreement, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this Agreement.

2. Submit monthly cost reimbursement claims. Documented verification of actual expenditures must support each claim. Reimbursement shall only be for expenditures that directly benefit Kings County.

3. Retain financial, programmatic, client data and other service records for three years from the date of the end of the contract award or for three years from the date of termination.

15. COMPLIANCE WITH LAW

Contractor shall comply with all federal, state and local laws and regulations applicable to its performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment.

16. CONFIDENTIALITY

A. Contractor shall prevent unauthorized disclosure of names and other client-identifying information, except for statistical information not identifying a particular client.

B. Contractor shall not use client specific information for any purpose other than carrying out Contractor's obligations under this Agreement.

C. Contractor shall promptly transmit to County all requests for disclosure of confidential information.

D. Except as otherwise permitted by this Agreement or authorized by the client, Contractor shall not disclose any confidential information to anyone other than the State without prior written authorization from County.

E. For purposes of this section, identity shall include, but not be limited to, name, identifying number, symbol or other client identifying particulars, such as fingerprints, voice print or photograph.

F. Contractor warrants that it is knowledgeable of Welfare and Institutions Code section 5328 respecting confidentiality of records. County and Contractor shall maintain the confidentiality of any information regarding clients (or their families) receiving Contractor's services. Contractor may obtain such information from application forms, interviews, tests or reports from public agencies, counselors or any other source. Without the client's written permission, Contractor shall divulge such information only as necessary for purposes related to the performance or evaluation of services provided pursuant to this Agreement, and then only to those persons having responsibilities under this Agreement, including those furnishing services under Contractor through subcontracts.

17. CONFLICT OF INTEREST

Contractor warrants that its employees or their immediate families or Board of Directors or officers have no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any interest, direct or indirect, which conflicts with the rendering of services under this Agreement. Contractor shall employ or retain no such person while rendering services under this Agreement. Services rendered by Contractor's associates or employees shall not relieve Contractor from personal responsibility under this clause.

Contractor has an affirmative duty to disclose to County in writing the name(s) of any person(s) who have an actual, potential or apparent conflict of interest.

18. DRUG FREE WORKPLACE

Contractor warrants that it is knowledgeable of Government Code section 8350 et seq. regarding a drug free workplace and shall abide by and implement its statutory requirements.

19. HEALTH AND SAFETY STANDARDS

A. Contractor shall abide by all health and safety standards set forth by the State of California and/or the County of Kings pursuant to the Injury and Illness Prevention Program.

B. Contractor acknowledges receipt of all health and safety information and training.

20. INSPECTION

Authorized representatives of County, the state and/or the federal government may inspect and/or audit Contractor's performance, place of business and/or records pertaining to this Agreement.

21. NONDISCRIMINATION

In rendering services under this Agreement, Contractor shall comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation.

Further, Contractor shall not discriminate against its employees, which includes, but is not limited to, employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

22. SUBCONTRACTOR AND ASSIGNMENT

A. Services under this Agreement are deemed to be personal services.

B. Contractor shall not subcontract any work under this Agreement nor assign this Agreement or monies due without the prior written consent of the Departmental Contract Manager, Department Head or his or her designee and the CAO subject to any required state or federal approval.

C. Assignment by Contractor of any monies due shall not constitute an assignment of the Agreement.

23. UNFORESEEN CIRCUMSTANCES

Contractor is not responsible for any delay caused by natural disaster, war, civil disturbance, labor dispute or other cause beyond Contractor's reasonable control, provided Contractor gives written notice to County of the cause of the delay within ten days of the start of the delay.

24. OWNERSHIP OF DOCUMENTS

A. County shall be the owner of and shall be entitled to possession of any computations, plans, correspondence or other pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by County or upon completion of the work pursuant to this Agreement. County's reuse of any such

materials on any project other than the project for which they were originally intended shall be at County's sole risk.

B. No material prepared in connection with the project shall be subject to copyright in the United States or in any other county.

25. NOTICE

Any notice necessary to the performance of this Agreement shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

**COUNTY:
COUNTY OF KINGS PURCHASING DIVISION**

**CONTRACTOR:
McCORMICK KABOT JENNER LEW**

**KINGS COUNTY GOVERNMENT CENTER
1400 WEST LACEY BOULEVARD
HANFORD, CALIFORNIA 93230**

**1220 W MAIN ST
VISALIA CA 93291**

If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

26. NONRENEWAL

Contractor acknowledges that there is no guarantee that County will renew Contractor's services under a new agreement following expiration or termination of this Agreement. Contractor waives all rights to notice of non-renewal of Contractor's services.

27. CHANGES AND AMENDMENTS

A. County may request changes in Contractor's scope of services. Any mutually agreed upon changes, including any increase or decrease in the amount of Contractor's compensation, shall be effective when incorporated in written amendments to this Agreement. Amendments that are not State approved vendor agreement amendments shall be submitted to the State for prior approval at least thirty days before the effective date of any proposed changes governing compensation, services or term.

B. The party desiring the revision shall request amendments to the terms and conditions of this Agreement in writing. Any adjustment to this Agreement shall be effective only upon the parties' mutual agreement in writing. All amendment requests shall be submitted in writing to the County Administrator's Office.

C. No verbal agreements or conversations prior to execution of this Agreement or requested Amendment shall affect or modify any of the terms or conditions of this

Agreement unless reduced to writing according to the applicable provisions of this Agreement.

28. CHOICE OF LAW

The parties have executed and delivered this agreement in the County of Kings, State of California. The laws of the State of California shall govern the validity, enforceability or interpretation of this Agreement. Kings County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Agreement. Contractor hereby waives any rights it may possess under Section 394 of the Code of Civil Procedure to transfer to a neutral county or other venue any action arising out of this Agreement.

29. ENTIRE AGREEMENT

This Agreement, including any exhibits referenced herein, constitutes the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by County or Contractor other than those contained herein.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first written above.

Oversight Board for Successor Agency,
COUNTY OF KINGS,
a Political
Subdivision of the State of California

By *Edward Mulykhanian*
Vice - Chairman, Oversight Board

CONTRACTOR

By 