

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE OVERSIGHT BOARD OF
DESERT HOT SPRINGS
AND
[DEVANEY PATE MORRIS AND CAMERON, LLP]**

This Professional Services Agreement ("Agreement") is made and entered into this 13th day of APRIL, 2016, by and between the Oversight Board for the Successor Agency to the Redevelopment Agency of the Oversight Board of Desert Hot Springs ("Oversight Board"), hereinafter referred to as the "Oversight Board," and Devaney Pate Morris and Cameron, LLP, a California limited partnership, hereinafter referred to as "Consultant."

RECITALS:

WHEREAS, the Oversight Board desires to utilize the services of Consultant, as an independent contractor, to perform legal advisory services to the Oversight Board as set forth in the Scope of Work attached as Exhibit A ("Services"); and

WHEREAS, Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

Section 2. SCOPE OF SERVICES

Consultant shall provide to the Oversight Board those Services as set forth in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein by this reference, at the time, place, and in the manner specified therein, in a manner

satisfactory to the Oversight Board and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

Section 3. COMPLETION DATE

Consultant shall complete the services described in the Scope of Services during the term of this Agreement, which shall be effective as of April 1, 2016, and expire May 31, 2017.

Section 4. COMPENSATION

The Oversight Board agrees to pay Consultant for and in consideration of the faithful performance of the consulting services and duties set forth in this Agreement, and Consultant agrees to accept from the Oversight Board, as and for compensation for the faithful performance of said services and duties, an amount not to exceed \$30,000 Thirty Thousand Dollars, in accordance with the Cost Proposal contained in the Scope of Services.

Section 5. METHOD OF PAYMENT

a. Consultant shall submit invoices to the Oversight Board, not more often than once a month, describing the work performed. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. The Oversight Board shall pay Consultant no later than thirty (30) days after approval of the invoice by Oversight Board staff provided that the services reflected in the invoice were performed to the reasonable satisfaction of the Oversight Board in accordance with the terms of this Agreement, that the number of hours of service set forth in the invoice reflect the amount of time ordinarily expended for such service by members of the profession currently practicing in the same locality under similar conditions, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement. Review and approval of invoice by Oversight Board staff will occur within thirty (30) calendar days of receipt of invoice via email.

b. The Consultant shall submit invoices under this Agreement to:

Linda Kelly, Program and Financial Specialist
Oversight Board of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240

Telephone: 760-329-6411, ext. 289
Facsimile: 760-288-0629
Email: Lkelly@cityofdhs.org

Section 6. EXTRA WORK

At any time during the term of this Agreement, the Oversight Board may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the Oversight Board to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform Extra Work without written authorization from the Oversight Board.

Section 7. TERMINATION

This Agreement may be terminated by the Oversight Board immediately for cause. The Oversight Board may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination, provided that Consultant shall have satisfied all its obligations under this Agreement through and including the effective date of termination.

Section 8. OWNERSHIP OF DOCUMENTS

All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the Oversight Board upon payment to Consultant for such work, and the Oversight Board shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at its expense, provide such reports, plans, studies, documents and other writings in pdf format to the Oversight Board upon written request.

Section 9. CONFIDENTIALITY

a. All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without prior written consent of the Oversight Board, be used by Consultant for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement.

Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential.

b. Consultant shall not use the Oversight Board's insignia or photographs relating to Consultant's Services, or any publicity pertaining to the Consultant's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the Oversight Board.

Section 10. CONSULTANT'S BOOKS AND RECORDS

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the Oversight Board for a minimum period of three years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the Oversight Board Manager, Oversight Board Attorney, Oversight Board Auditor or a designated representative of these officers. Copies of such documents shall be provided to the Oversight Board for inspection at Oversight Board Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where the Oversight Board has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, the Oversight Board may, by written request of any of the above-named officers, require that custody of the records be given to the Oversight Board and that the records and documents be maintained at Oversight Board Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

Section 11. INDEPENDENT CONTRACTOR'S STATUS: NOT AGENT OF THE OVERSIGHT BOARD

Consultant shall at all times during the term of this Agreement remain, as to the Oversight Board, a wholly independent contractor and shall perform the services described in this Agreement as an independent contractor and further, hereby waives

any claims for any compensation or benefits afforded to Oversight Board employees and not to independent contractors. Neither the Oversight Board nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Nothing contained in this Agreement shall be deemed, construed or represented by the Oversight Board or Consultant or by any third person to create the relationship of principal and agent and Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the Oversight Board. Consultant shall have no authority, express or implied, to act on behalf of the Oversight Board in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the Oversight Board to any obligation whatsoever.

**Section 12. REPRESENTATIONS AND ACKNOWLEDGMENTS
REGARDING INDEPENDENT CONTRACTOR'S STATUS
OF CONSULTANT**

a. Consultant represents and acknowledges the following:

(1) The Oversight Board is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the Oversight Board.

(3) The services described in this Agreement can be performed without the use of Oversight Board equipment, materials, tools or facilities.

(4) Nothing in this Agreement shall be interpreted to imply that the Oversight Board must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The Oversight Board will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the Oversight Board.

b. The Oversight Board represents and acknowledges the following:

(1) Consultant is not required to comply with daily instructions from Oversight Board staff with respect to when, where or how Consultant must perform the services set forth in this Agreement.

(2) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(3) The Oversight Board will not hire, supervise or pay any assistants working for Consultant pursuant to this Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the Consultant must maintain any contractual relationship with the Oversight Board on a continuing basis after termination of this Agreement.

(5) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(6) Consultant is not required to devote full time to the business operations of the Oversight Board in order to perform the services set forth in this Agreement.

(7) Consultant is not required to perform the services set forth in the Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

(9) Consultant is not required to perform the Services at Oversight Board-owned property.

Section 13. CIVIL CODE SECTION 1542 WAIVER (Cal PERS)

Consultant expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, that are known or unknown, or suspected or unsuspected, including, without limitation,

claims of entitlements under the California Public Employees' Retirement System ("CalPERS") that are only afforded to employees and not independent contractors. Consultant further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Initials

Section 14. CONFLICTS OF INTEREST

a. Consultant (including principals, associates and professional employees) covenants and represents that it does not have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source or income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

b. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- (1) Does not make or participate in:
 - (i) the making or any governmental decisions regarding approval of a rate, rule, or regulation, the adoption or enforcement of laws;
 - (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certificates, approvals, orders, or similar authorization or entitlement;
 - (iii) authorizing the Oversight Board to enter into, modify, or renew a contract;
 - (iv) granting the Oversight Board approval to a contract that requires Oversight Board approval and to which the Oversight Board is a party, or to the specifications for such a contract;
 - (v) granting the Oversight Board approval to a plan, design, report, study, or similar item; or

- (vi) adopting, or granting Oversight Board approval of, policies, standards, or guidelines for the Oversight Board or for any subdivision thereof.

(2) Does not serve in a staff capacity with the Oversight Board and in that capacity participate in making a governmental decision or otherwise perform the same or substantially all the same duties for the Oversight Board that would otherwise be performed by an individual holding a position specified in the Oversight Board's Conflict of Interest Code under Government Code Section 87302.

c. In the event the Oversight Board officially determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file the subject Form 700 with the Oversight Board Clerk's Office pursuant to the written instructions provided by the Office of the Oversight Board Clerk.

**Section 15. PROFESSIONAL ABILITY OF CONSULTANT;
WARRANTY; FAMILIARITY WITH WORK; PERMITS AND
LICENSES**

a. Consultant warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

b. By executing this Agreement, Consultant warrants that:

- (1) it has thoroughly investigated and considered the work to be performed;
- (2) it has investigated the issues, regarding the scope of services to be provided;
- (3) it has carefully considered how the work should be performed; and
- (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

c. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the Oversight Board, it shall immediately inform the Oversight Board of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Oversight Board Manager or appropriate Oversight Board representative.

d. Consultant represents that it and all of its subcontractors, if any, have obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a Oversight Board business license.

Section 16. COMPLIANCE WITH LAWS

Consultant shall comply with all local, state and federal laws and regulations applicable to the services required hereunder.

Section 17. INDEMNIFICATION

a. Consultant shall defend, indemnify and hold harmless the Oversight Board, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect (including any and all costs and expenses in connection therewith), arising out of the negligent acts, errors or omissions of Consultant or its officers, officials, agents, or employees in the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the Oversight Board, its officers, agents, employees or volunteers.

b. The Oversight Board does not, and shall not, waive any rights that it may have against Consultant under this Section because of the acceptance by the Oversight Board, or the deposit with the Oversight Board, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions of this Section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

c. Notwithstanding the provisions of subsections a. and b. of this section, Consultant shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of the Oversight Board to furnish timely information or to approve or disapprove Consultant's work promptly, or by reason of delay or faulty performance by the Oversight Board, construction contractors, or governmental agencies, or by reason of any other delays beyond Consultant's control, or for which Consultant is without fault.

d. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the Oversight Board, Consultant shall indemnify, defend, and hold harmless Oversight Board for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or

subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the Oversight Board.

Section 18. INSURANCE REQUIREMENTS

a. Policies. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of this Agreement, the following insurance policies:

(1) Worker's Compensation Coverage. Consultant shall maintain Worker's Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California, of an amount not less than one million dollars (\$1,000,000) per accident. In addition, Consultant shall require each subcontractor to similarly maintain Worker's Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. If any class of employees employed by Consultant pursuant to this Agreement is not protected by the California State Worker's Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the Oversight Board. This provision shall not apply if Consultant has no employees performing work under this Agreement. Consultant agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the Oversight Board, and to require any and all subcontractors and any other person or entity involved in the Services to do the same.

(2) General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence, combined single limit coverage for bodily injury, personal injury and property damage associated with work contemplated in this Agreement. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Consultant shall provide insurance on an occurrence, not claims-made basis. Consultant acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess coverage, personal and advertising injury coverage shall be triggered by an "offense" while bodily injury and property damage coverage shall be triggered by an "occurrence" during the policy period. The coverage required in this paragraph shall provide at least as much coverage as that provided by ISO form CG 00 01 12 07 or any updated form thereof.

(3) Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury, personal injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000)

combined single limit for each occurrence, and two million dollars (\$2,000,000) in the aggregate. As an alternative, Consultant shall be permitted to obtain a non-owned automobile endorsement to its comprehensive general liability insurance providing the same protection and coverage as though Consultant were to provide separate commercial vehicle liability insurance as set forth in this paragraph. The coverage required in this paragraph shall provide at least as much coverage as that provided by ISO form CA 00 01 or any updated form thereof.

(4) Professional Liability Coverage. Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's Services, whether such Services are performed by Consultant or by its employees, subcontractors, or sub-consultants, to the extent such persons other than Consultant are permitted to perform any of the Services under this Agreement. The amount of this insurance shall not be less than one million dollars (\$1,000,000) per claim, and two million dollars (\$2,000,000) in the aggregate.

b. Endorsements. Unless otherwise specified hereunder, each insurance policy required herein shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

(1) Except for worker's compensation, errors and omissions, or professional liability coverage, the Oversight Board, its elected or appointed officers, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

(2) This policy shall be considered primary insurance as respects the Oversight Board, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the Oversight Board, including any self-insured retention the Oversight Board may have shall be considered excess insurance only and shall not contribute with it.

(3) This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

(4) The insurer waives all rights of subrogation against the Oversight Board, its elected or appointed officials, officers, employees or agents.

(5) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Oversight Board, its elected or appointed officers, officials, employees, agents or volunteers.

(6) The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the Oversight Board.

c. Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of Oversight Board for any self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, only upon the prior express written authorization of the Oversight Board Manager, Consultant may either reduce or eliminate such deductibles or self-insured retentions with respect to Oversight Board, its officers, employees, agents, and volunteers. The Oversight Board Manager may condition approval of any reduction or elimination in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

d. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to the Oversight Board as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the Oversight Board on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the Oversight Board at all times during the term of this Agreement.

e. Imposition of Insurance Requirements. Provided the Oversight Board gives its written consent for any persons other than Consultant to perform any part of the Services, Consultant agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Consultant enters into contracts or whom Consultant hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum, and name as additional insureds the parties to this Agreement consistent with Section 18b(1) hereof. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

f. Maintain Coverages. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Consultant agrees to maintain all coverages required herein until the Oversight Board provides written authorization to terminate the coverages following the Oversight Board's review and determination that all liability posed under this Agreement as to the party providing insurance has been eliminated.

g. Failure to Obtain Coverages. Consultant agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is

maintained by any subcontractors or others involved in any way with the performance of Services, to the extent such is permissible under this Agreement, Consultant shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the Oversight Board or its officers, employees, servants, volunteers, agents and independent contractors.

h. Notice of Cancellation or Reduction in Coverage. In the event that any coverage required in this Agreement is canceled, reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to the Oversight Board either by telephone, facsimile and/or via certified mail, at Consultant's earliest possible opportunity and in no case later than fifteen (15) calendar days after Consultant is notified of the change in coverage.

Section 19. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the Oversight Board:

Oversight Board of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240
Telephone: _____, ext. ____
Facsimile: _____
Email: _____

To Consultant:

Devaney Pate Morris and Cameron, LLP
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106
attn: Barry J. Schultz
Telephone: 619-354-5030
Email: bschultz@dpmclaw.com

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 20. DEFAULT

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "material breach" shall be deemed to have occurred. In the event of a material breach, the injured party shall be entitled to seek any appropriate remedy or damages as otherwise set forth herein and by initiating legal proceedings.

Section 21. REMEDIES

If Consultant materially breaches any of the terms of this Agreement, the Oversight Board's remedies shall include, but shall not be limited to, the following:

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- c. Retain a different consultant to complete the work described in the Scope of Services that is not finished by Consultant.

Section 22. ENTIRE AGREEMENT

a. This Agreement supersedes any and all other agreements, either oral or written, between the Oversight Board and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 23. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both parties.

Section 24. ASSIGNMENT AND SUBCONTRACTING

a. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the Oversight Board to enter into this Agreement. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the written consent of the Oversight Board.

b. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written consent of the Oversight Board. If the Oversight Board consents to such subcontract, Consultant shall be fully responsible to the Oversight Board for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the Oversight Board and subcontractor nor shall it create any obligation on the part of the Oversight Board to pay or to see to the payment of any monies due to any such subcontractor other than as required by law.

Section 25. WAIVER

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 26. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 27. VENUE

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 28. LITIGATION EXPENSES AND ATTORNEYS' FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 29. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least a copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 30. PROHIBITED INTERESTS

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Oversight Board shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of the Oversight Board, during the term of his or her service with

the Oversight Board, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

Section 31. EQUAL OPPORTUNITY EMPLOYMENT

Consultant represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Unless otherwise permitted under the law, Consultant shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

Section 32. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 33. PRINCIPAL REPRESENTATIVES

a. Barry J. Schultz shall be Consultant's Principal Representative and the person responsible for undertaking, managing and supervising the performance of all of the services set forth in the Scope of Services for this Agreement. Consultant's Principal Representative's experience, knowledge, capability and reputation were a substantial inducement for the Oversight Board to enter into this Agreement, and as such, for the purposes of performing the Scope of Services of this Agreement, the duties of Consultant's Principal Representative shall not be reassigned, without the express written consent of both parties.

b. The Martin Magana, Oversight Board Manager shall be the Principal Representative of the Oversight Board for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

**Section 34. NON-LIABILITY OF OVERSIGHT BOARD'S OFFICERS
AND EMPLOYEES**

No officer or employee of the Oversight Board shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the Oversight Board or for any amount which may become due to Consultant or to its successor, or for any breach of any obligation of the terms of this Agreement.

Section 35. **INTERPRETATION**

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

Section 36. **PROTECTION AND CORRECTION OF WORK**

a. Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work performed by Consultant, and the equipment, materials, papers and other components thereof to prevent losses or damages.

b. The performance of services by Consultant shall not relieve Consultant from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Oversight Board, when such inaccuracies are due to the fault of Consultant.

Section 37. **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 38. **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 39. **CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 40. **NO THIRD PARTY BENEFICIARIES**

The parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

Section 41. **OTHER GOVERNMENTAL REGULATIONS**

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Oversight Board is bound by the terms of such fiscal assistance program.

**Section 42. REPRESENTATIONS OF PARTIES AND PERSONS
EXECUTING AGREEMENT**

a. Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

Section 43. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties hereto.

Section 44. SURVIVAL

All obligations arising prior to any termination of this Agreement and all provisions of this Agreement allocating liability between the Oversight Board and Consultant shall survive any such termination.

Section 45. FINGERPRINTING

Consultant hereby acknowledges that it is required to be livescanned (fingerprinted) by the Oversight Board of Desert Hot Springs Police Department, at Consultant's expense, prior to execution of this Agreement. In the event Consultant does not do so prior to execution, Consultant agrees to do so immediately following execution hereof.

Section 46. USE OF RECYCLED PRODUCTS

Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

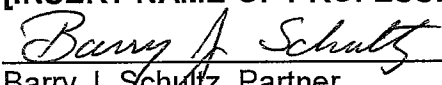
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

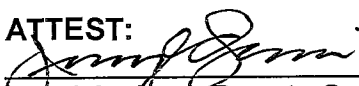
OVERSIGHT BOARD OF DESERT
HOT SPRINGS


Russ Martin, Oversight Board Chair

[INSERT NAME OF PROFESSIONAL]


Barry J. Schultz, Partner
Devaney Pate Morris and Cameron, LLP

ATTEST:


Jeryl Sorfano, Deputy Oversight
Board Clerk

APPROVED AS TO FORM:



Steven B. Quintanilla, Successor
Agency Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Exhibit A

The Scope of Work

The Oversight Board is seeking proposals from qualified, licensed, and insured attorneys to provide legal counsel. The successful proposer shall be the legal advisor to the Oversight Board responsible for advising the Board on issues related to the Brown Act, Public Records Act, Political Reform Act and particularly the California Community Redevelopment Law and the dissolution provisions set forth in *HSC* §§ 33500 *et seq.*, particularly those function of the Oversight Board set forth in *HSC* §§ 34179-34181.

Legal Counsel will be expected to perform a range of legal duties which may include, but is not limited to the following:

- Be present at all Oversight Board Meetings, providing Brown Act and other legal advice, as necessary;
- Provide legal advice regarding Oversight Board member duties, responsibilities and obligations;
- Provide legal advice and consultation on issues and actions before the Oversight Board;
- Provide legal advice and consultation to the Oversight Board regarding its relationship to and role with the Successor Agency;
- Provide legal opinions as requested by the Oversight Board on matters related to the duties of the Board;
- Ensure that the agenda and all supporting documents comply with the provisions of the Brown Act; and
- Other duties as necessary within the scope of the Oversight Board.

Please note that the preceding is not intended to be an all-inclusive listing of all of the legal issues that the Oversight Board may retain the successful proposer to provide, but is intended to be a representative listing of prospective duties and tasks.

EXHIBIT B

**AGREEMENT FOR
LEGAL SERVICES BETWEEN THE OVERSIGHT BOARD FOR
THE SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF DESERT HOT SPRINGS AND**

THIS AGREEMENT for legal services is made and entered into this ____ day of _____, 2012, ("Effective Date") by and between the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Desert Hot Springs ("Oversight Board") and _____ ("Contractor").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to the Oversight Board the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on _____, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession. Contractor shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that the Oversight Board, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from Oversight Board of such desire of Oversight Board, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Contractor's obligations hereunder.

Section 2. COMPENSATION. Oversight Board hereby agrees to pay Contractor a fee set forth in Exhibit B, attached hereto and incorporated herein by reference, for all services under this Agreement. Oversight Board shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified in Exhibit B shall be the only payments from the Oversight Board to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to the Oversight Board in the manner specified herein (invoices will be paid upon completion of services and delivery of invoice to the Oversight Board). Except as specifically authorized by Oversight Board, Contractor shall not bill Oversight Board for duplicate services performed by more than one person.

Contractor and the Oversight Board acknowledge and agree that compensation paid by the Oversight Board to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees,