

**OVERSIGHT BOARD OF THE
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

A G E N D A

NOVEMBER 13, 2013

**City of Imperial Beach Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

REGULAR MEETING – 10:30 a.m.

The Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at Oversight Board meetings, please contact the City Clerk's/Secretary's Office at (619) 423-8301, as far in advance of the meeting as possible.

1. CALL TO ORDER

2. ROLL CALL BY CITY CLERK/SECRETARY

3. PUBLIC COMMENTS - Each person wishing to address the Oversight Board regarding items not on the posted agenda may do so at this time. In accordance with State law, the Oversight Board may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the Successor Agency staff or placed on a future agenda.

4. REPORTS

A. APPROVAL OF MINUTES.

Recommendation: Approve the Oversight Board Regular Meeting Minutes of October 9, 2013.

B. ADOPTION OF RESOLUTION NO. OB-13-29 APPROVING AN AS-NEEDED PROFESSIONAL SERVICES AGREEMENT WITH THE LAW FIRM KANE, BALLMER & BERKMAN.

Recommendation: Adopt resolution.

5. ADJOURNMENT

/s/
Jacqueline M. Hald, MMC
City Clerk/Secretary

For your convenience, a copy of the agenda and meeting packet may be viewed in the office of the City Clerk at City Hall or on our website at www.ImperialBeachCA.gov. Go to the Imperial Beach Redevelopment Agency Successor Agency page located under the Government Section.

Any writings or documents provided to a majority of the Oversight Board regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

MINUTES

OVERSIGHT BOARD OF THE
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

OCTOBER 9, 2013

City of Imperial Beach Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

REGULAR MEETING – 10:30 a.m.

1. **CALL TO ORDER**

CHAIR PERSON WINTER called the Regular Meeting to order at 10:31 a.m.

2. **ROLL CALL BY CITY CLERK/SECRETARY**

Oversight Board Members present: Yanda, West (arrived at 10:34 a.m.), Saadat, Hentschke, Foltz

Vice Chair present: Fernandez

Chair present: Winter

Staff present: Deputy Executive Director Wade, City Attorney Lyon, Special Counsel Berkey, City Clerk/Secretary Hald

3. **PUBLIC COMMENTS**

None.

4. **REPORTS**

A. **APPROVAL OF MINUTES.**

MOTION BY WINTER, SECOND BY SAADAT, TO APPROVE THE OVERSIGHT BOARD SPECIAL MEETING MINUTES OF SEPTEMBER 25, 2013. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS: YANDA, SAADAT, FERNANDEZ, WINTER, HENTSCHKE, FOLTZ

NOES: BOARD MEMBERS: NONE

ABSENT: BOARD MEMBERS: WEST

B. ADOPTION OF RESOLUTION NO. OB-13-27 OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SADBERRY-PALM AVENUE LLC FOR THE SALE OF LAND FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06), AND (II) APPROVING OTHER RELATED ACTIONS.

CHAIR PERSON WINTER introduced the item.

DEPUTY EXECUTIVE DIRECTOR WADE gave a PowerPoint presentation on the item. He reviewed the proposed plans and explained the key points of the purchase and sale agreement. He responded to questions from the Board regarding the 55-year participation component noting that there is an incentive for Sudberry to hold on to the property. Should Sudberry decide to sell any portion of the property, Sudberry would give up a portion of the proceeds to benefit the taxing entities. With regard to questions about the likelihood of the Department of Finance (DOF) rejecting the purchase and sale

agreement, he stated that the disposition of the property was a result of specific guidance and discussions with the Department of Finance.

With regard to questions about the appraisal of the property, SPECIAL COUNSEL BERKEY stated that she has not heard of any counter appraisals prepared by the DOF. She also stated that the Dissolution Act does not specifically require appraisals to be performed, however, the appraisal justifies the purchase price and is evidence of support of that number.

DEPUTY EXECUTIVE DIRECTOR WADE stated that with regard to Section 307 – Site Preparation, the City would have no other involvement other than the remaining of the \$2.2 million of bond proceeds. Moving forward with the agreement, nominal costs to the Successor Agency may be involved such as administrative and/or legal costs covered by RPTTF.

SPECIAL COUNSEL BERKEY added that when the original DDA was prepared, site work that needed to be performed at that time has since been completed.

DEPUTY EXECUTIVE DIRECTOR WADE stated that redlined changes were submitted to the Board as last minute agenda information.

MOTION BY WINTER, SECOND BY WEST, TO ADOPT RESOLUTION NO. OB-13-27 OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (I) APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AND SADBERRY-PALM AVENUE LLC FOR THE SALE OF LAND FOR THE DEVELOPMENT OF THE 9TH & PALM AVENUE RETAIL/COMMERCIAL SPACE DEVELOPMENT PROJECT LOCATED AT 735-849 PALM AVENUE (APN 626-250-03, 04, 05 & 06), AND (II) APPROVING OTHER RELATED ACTIONS. MOTION CARRIED UNANIMOUSLY.

CHAIR PERSON WINTER thanked Sudberry for their ongoing interest in proceeding with the project.

C. ADOPTION OF RESOLUTION NO. OB-13-28 OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE AMENDED LONG RANGE PROPERTY MANAGEMENT PLAN PREPARED PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34191.5.

CHAIR PERSON WINTER introduced the item.

DEPUTY EXECUTIVE DIRECTOR WADE reported on the item.

SPECIAL COUNSEL BERKEY stated that there is no timeline in the Dissolution Act for the DOF to render a decision on the Long Range Property Management Plan and there is no appeal process.

MOTION BY FERNANDEZ, SECOND BY SAADAT, TO ADOPT RESOLUTION NO. OB-13-28 OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE AMENDED LONG RANGE PROPERTY MANAGEMENT PLAN PREPARED PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34191.5. MOTION CARRIED UNANIMOUSLY.

5. ADJOURNMENT

The meeting was adjourned at 11:04 a.m.

MAYDA C. WINTER, CHAIR PERSON

**JACQUELINE M. HALD, MMC
CITY CLERK/SECRETARY**

STAFF REPORT
OVERSIGHT BOARD
TO THE
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

TO: CHAIR AND MEMBERS OF THE OVERSIGHT BOARD

FROM: ANDY HALL, EXECUTIVE DIRECTOR
GREGORY WADE, DEPUTY DIRECTOR *GW*

MEETING DATE: NOVEMBER 13, 2013

SUBJECT: ADOPTION OF RESOLUTION NO. OB-13-29 APPROVING AN AS-NEEDED PROFESSIONAL SERVICES AGREEMENT WITH THE LAW FIRM KANE, BALLMER & BERKMAN

EXECUTIVE SUMMARY:

Successor Agency staff is seeking approval of Oversight Board Resolution No. OB-13-29 approving a Professional Services Agreement between the Successor Agency and the law firm of Kane, Ballmer & Berkman to provide specialized legal services.

BACKGROUND:

The law firm of Kane, Ballmer & Berkman has provided specialized legal services related to redevelopment matters and projects to the former Redevelopment Agency and the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") for a number of years. The law firm has provided necessary and extensive legal advice related to the Redevelopment Dissolution process over the last two years. The current legal services agreement with Kane, Ballmer & Berkman was entered into with the City on May 4, 2011. The term of that agreement was to expire after completion of the Scope of Services. Although the services are on-going and still required, the maximum amount of the contract has been reached and, therefore, a new contract must be approved. Additionally, staff is recommending that a separate agreement be executed between the Successor Agency and Kane, Ballmer & Berkman as previous agreements involved the City as a party.

ANALYSIS:

The proposed Professional Services Agreement with the Successor Agency is to provide specialized legal services on an as-needed basis. The proposed agreement will allow the Successor Agency to obtain specialized legal advice related to former RDA projects, the Redevelopment Dissolution process and services required by the Successor Agency involving proceedings or actions under the California Community Redevelopment Law and the California Housing Authorities Law.

On November 6, 2013, the Successor Agency Board adopted Resolution No. SA-13-34, which approved the proposed agreement. Staff is now recommending that the Oversight Board

approve the Professional Services Agreement with Kane, Ballmer & Berkman so that it will be effective as to the Successor Agency. If approved by the Oversight Board, the agreement will be submitted to the California Department of Finance for review and approval if review by the DOF is timely requested. Obtaining such approvals may support the Successor Agency's requests for funding the legal services included on subsequent Recognized Obligation Payment Schedules.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

All attorney work for the Successor Agency will be billed at the same rate of up to \$275.00 per hour. The Successor Agency has budgeted for legal costs as needed in its biannual administrative budgets, which requires approval by the Oversight Board and the State Department of Finance.

RECOMMENDATION:

Staff recommends that the Oversight Board adopt Resolution No. OB-13-29 approving the Professional Services Agreement with the law firm of Kane, Ballmer & Berkman to provide specialized legal services on an as-needed basis for the Successor Agency.

Attachments:

1. Resolution No. OB-13-29
2. Successor Agency Resolution No. SA-13-34
3. Successor Agency Professional Services Agreement

RESOLUTION NO. OB-13-29

A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH KANE, BALLMER & BERKMAN FOR SPECIALIZED LEGAL SERVICES

WHEREAS, the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") desires effective, efficient, and cost effective specialized legal services; and

WHEREAS, the current Agreement with the law firm of Kane, Ballmer & Berkman was executed on May 4, 2011; and

WHEREAS, the Successor Agency now wishes to enter into a new agreement because it is necessary and convenient for the management of Successor Agency affairs; and

WHEREAS, Kane, Ballmer & Berkman will perform these services and responsibilities as stated in the Professional Services Agreement ("Agreement"); and

WHEREAS, at its meeting on November 6, 2013, the Successor Agency Board adopted Resolution No. SA-13-34, which approved the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency as follows:

1. The above-listed recitals are true and correct and are hereby incorporated as findings.
2. The Oversight Board hereby approves the Professional Services Agreement with Kane, Ballmer & Berkman to provide specialized legal services to the Successor Agency on an as-needed basis.
3. The Oversight Board hereby authorizes and directs the Executive Director to execute said Professional Services Agreement upon taking any necessary steps for approval as required by law.
4. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 13th day of November 2013, by the following vote:

AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:

MAYDA C. WINTER, CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, CMC
SECRETARY

RESOLUTION NO. SA-13-34

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH KANE, BALLMER & BERKMAN FOR SPECIALIZED LEGAL SERVICES

WHEREAS, the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") desires effective, efficient, and cost effective specialized legal services; and

WHEREAS, the current Agreement with the law firm was executed on May 4, 2011; and

WHEREAS, the Successor Agency now wishes to enter into a new agreement because it is necessary and convenient for the management of Successor Agency affairs; and

WHEREAS, Kane, Ballmer & Berkman will perform these services and responsibilities as stated in the Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency as follows:

1. The above-listed recitals are true and correct and are hereby incorporated as findings.
2. The Board hereby approves the Professional Services Agreement with Kane, Ballmer & Berkman.
3. The Board hereby authorizes and directs the Executive Director to execute said Professional Services Agreement for and on behalf of the Imperial Beach Redevelopment Agency Successor Agency upon taking any necessary steps for approval as required by law.

PASSED, APPROVED, AND ADOPTED by the Board of Directors of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 6th day of November 2013, by the following vote:

AYES:	BOARDMEMBERS:	SPRIGGS, BILBRAY, PATTON, BRAGG JANNEY
NOES:	BOARDMEMBERS:	NONE
ABSENT:	BOARDMEMBERS:	NONE

JAMES C. JANNEY, CHAIR

ATTEST:

**JACQUELINE M. HALD, MMC
SECRETARY**



Imperial Beach Redevelopment Agency Successor Agency
AGREEMENT FOR PROFESSIONAL SERVICES
FOR SPECIALIZED LEGAL SERVICES

This Agreement, entered into this 13th day of November, 2013, by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (hereinafter referred to as "SUCCESSOR AGENCY") and KANE, BALLMER & BERKMAN (hereinafter referred to as "CONSULTANT") (collectively "PARTIES").

RECITALS

WHEREAS, SUCCESSOR AGENCY desires to employ CONSULTANT to furnish professional specialized legal services ("PROFESSIONAL SERVICES"); and

WHEREAS, the SUCCESSOR AGENCY has determined that CONSULTANT is qualified by experience and ability to perform the services desired by SUCCESSOR AGENCY, and CONSULTANT is willing to perform such services; and

WHEREAS, CONSULTANT will conduct all the work as described and detailed in this Agreement to be provided to the SUCCESSOR AGENCY; and

WHEREAS, Kane, Ballmer & Berkman has efficiently and effectively represented the SUCCESSOR AGENCY as special legal counsel on redevelopment and post-redevelopment issues; and

WHEREAS, the SUCCESSOR AGENCY's previous agreement(s) with CONSULTANT must be extended; and

WHEREAS, the SUCCESSOR AGENCY has authorized the preparation of an Agreement to retain the services of CONSULTANT as hereinafter set forth;

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES THAT SUCCESSOR AGENCY DOES HEREBY RETAIN CONSULTANT ON THE FOLLOWING TERMS AND CONDITIONS:

Section 1. EMPLOYMENT OF CONSULTANT.

SUCCESSOR AGENCY hereby agrees to engage CONSULTANT and CONSULTANT hereby agrees to perform the services hereinafter set forth, in accordance with all terms and conditions contained herein. CONSULTANT represents that all professional services required hereunder will be performed directly by CONSULTANT, or under direct supervision of CONSULTANT.

Section 2. SCOPE OF SERVICES AND COMPENSATION.

2.1 CONSULTANT shall provide services on an as-needed basis and as requested by SUCCESSOR AGENCY as described in Exhibit "A" entitled "Scope of Services," attached hereto and made a part hereof.

2.2 As additional consideration, CONSULTANT and SUCCESSOR AGENCY agree to abide by the terms and conditions contained in this Agreement.

2.3 CONSULTANT will, in a professional manner, furnish all labor and all personnel; all supplies, materials, equipment, printing, vehicles, transportation, office space, and facilities; all testing, analyses, and calculations; and all other means, except as otherwise expressly specified to be furnished by SUCCESSOR AGENCY, that are necessary or proper to complete the work and provide the required PROFESSIONAL SERVICES.

2.4 CONSULTANT shall be compensated for work completed on an as-needed basis for basic services rendered under this Section 2, at the rates as more particularly described in Exhibit "B" entitled "Fees." CONSULTANT shall be compensated for additional services only upon prior written approval of SUCCESSOR AGENCY.

2.5 CONSULTANT shall submit monthly statements for basic and additional services rendered in accordance with this Agreement. Payments to CONSULTANT will be made by SUCCESSOR AGENCY within thirty (30) days of receipt of invoice. SUCCESSOR AGENCY agrees that the CONSULTANT's billings are correct unless SUCCESSOR AGENCY, within ten (10) days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event SUCCESSOR AGENCY disputes part or all of an invoice, SUCCESSOR AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty days.

Section 3. TERM.

The PROFESSIONAL SERVICES provided under this Agreement shall begin on the effective date of this Agreement as noted above provided that the SUCCESSOR AGENCY obtains approval or ratification from the Oversight Board for the Imperial Beach Redevelopment Agency Successor Agency and the California State Department of Finance, if required, and end upon termination of the Agreement as more particularly described under and pursuant to Section 13 of this Agreement.

Section 4. CHANGES.

SUCCESSOR AGENCY may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the CONSULTANT's cost of, or time required for, completion of the Scope of Services, an equitable adjustment to CONSULTANT's compensation and/or contract time shall be made, subject to the SUCCESSOR AGENCY's approval. All such changes shall be authorized in writing, executed by CONSULTANT and SUCCESSOR AGENCY.

Section 5. OWNERSHIP OF DOCUMENTS.

All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this Agreement shall be considered the property of SUCCESSOR AGENCY. CONSULTANT may retain such copies of said documents and materials as desired, but shall deliver all original materials to SUCCESSOR AGENCY.

Section 6. AUDIT OF RECORDS.

6.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of SUCCESSOR AGENCY for examination all of its records with respect to all matters covered by this Agreement and shall permit SUCCESSOR AGENCY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

6.2. The CONSULTANT shall include the SUCCESSOR AGENCY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

Section 7. NO ASSIGNMENTS.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which SUCCESSOR AGENCY, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

Section 8. INDEPENDENT CONTRACTOR.

At all times during the term of this Agreement, CONSULTANT and any subcontractors employed by CONSULTANT shall be an independent contractor and shall not be an employee of the SUCCESSOR AGENCY. SUCCESSOR AGENCY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, SUCCESSOR AGENCY shall not have the right to control the means by which CONSULTANT accomplishes its services. Any provision in this Agreement that may appear to give SUCCESSOR AGENCY the right to direct CONSULTANT or sub consultant as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT shall follow the direction of the SUCCESSOR AGENCY as to end results of the work only.

Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which SUCCESSOR AGENCY employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, CONSULTANT being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

Section 9. LICENSES, PERMITS, ETC.

CONSULTANT represents and declares to SUCCESSOR AGENCY that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT represents and warrants to SUCCESSOR AGENCY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for CONSULTANT to practice its profession. CONSULTANT shall obtain and maintain a City of Imperial Beach business license during the term of this Agreement.

Section 10. INSURANCE.

10.1 CONSULTANT shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" unless otherwise approved in writing by the SUCCESSOR AGENCY's Risk Manager.

10.2 CONSULTANT's liabilities, including but not limited to CONSULTANT's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the SUCCESSOR AGENCY is entitled to thirty (30) days prior written notice of cancellation or non-renewal of the policy

or policies, or ten (10) days prior written notice for cancellation due to non-payment of premium. Maintenance of specified insurance coverage is a material element of this Agreement.

10.3 Types and Amounts Required. CONSULTANT shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

10.3.1 Commercial General Liability (CGL). If checked the CONSULTANT shall maintain CGL Insurance written on an ISO Occurrence form or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$1,000,000.00 per occurrence and subject to an annual aggregate of \$2,000,000.00. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

10.3.2 Commercial Automobile Liability. If checked the CONSULTANT shall maintain Commercial Automobile Liability Insurance for all of the CONSULTANT's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

10.3.3 Workers' Compensation. If checked the CONSULTANT shall maintain Worker's Compensation insurance for all of the CONSULTANT's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum \$1,000,000.00 employers' liability coverage. The CONSULTANT shall provide an endorsement that the insurer waives the right of subrogation against the SUCCESSOR AGENCY and its respective elected officials, officers, employees, agents and representatives.

10.3.4 Professional Liability. If checked the CONSULTANT shall also maintain Professional Liability (errors and omissions) coverage with a limit of \$1,000,000 per claim and \$2,000,000 annual aggregate. The CONSULTANT shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The CONSULTANT agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the SUCCESSOR AGENCY's exposure to loss. All defense costs shall be outside the limits of the policy.

10.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the CONSULTANT and must be declared to and approved by the SUCCESSOR AGENCY. At the option of the SUCCESSOR AGENCY, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the SUCCESSOR AGENCY, its officers, officials, employees and volunteers, or (2) the CONSULTANT shall provide a financial guarantee satisfactory to the SUCCESSOR AGENCY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

10.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

10.5.1 The SUCCESSOR AGENCY, its officers, officials, employees, and representatives shall be named as additional insureds. The SUCCESSOR AGENCY's additional insured status must be reflected on additional insured endorsement form which shall be submitted to the SUCCESSOR AGENCY.

10.5.2 The policies are primary and non-contributory to any insurance that may be carried by the SUCCESSOR AGENCY, as reflected in an endorsement which shall be submitted to the SUCCESSOR AGENCY.

10.6 Verification of Coverage. CONSULTANT shall furnish the SUCCESSOR AGENCY with original certificates and amendatory endorsements effecting coverage required by this Section 10. The endorsement should be on forms provided by the SUCCESSOR AGENCY or on other than the SUCCESSOR AGENCY's forms provided those endorsements conform to SUCCESSOR AGENCY requirements. All certificates and endorsements are to be received and approved by the SUCCESSOR AGENCY before work commences. The SUCCESSOR AGENCY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

10.7 Successor Agency Options. CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect, SUCCESSOR AGENCY may either (1) immediately terminate this Agreement, or (2) take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

CONSULTANT shall assume liability for the wrongful or negligent acts, errors and omissions of its officers, agents and employees and subcontractors in regard to any functions or activity carried out by them on behalf of SUCCESSOR AGENCY pursuant to the terms of this Agreement.

Section 11. CONSULTANT NOT AN AGENT.

Except as SUCCESSOR AGENCY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of SUCCESSOR AGENCY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement to bind SUCCESSOR AGENCY to any obligation whatsoever.

Section 12. INDEMNITY.

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the SUCCESSOR AGENCY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the active or sole negligence or willful misconduct by the SUCCESSOR AGENCY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense SUCCESSOR AGENCY incurs or makes to or on behalf of an injured employee under the SUCCESSOR AGENCY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

Section 13. TERMINATION.

Either party may terminate this Agreement at any time by giving ten (10) calendar days written notice to the other party of such termination and specifying the effective date thereof at least ten (10) calendar days before the effective date of such termination. In the event of a termination by SUCCESSOR AGENCY, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by CONSULTANT shall, at the option of SUCCESSOR AGENCY, become the property of SUCCESSOR AGENCY. If this Agreement is terminated by SUCCESSOR AGENCY as provided herein, CONSULTANT will be paid an amount which bears the

same ratio to the total compensation as the services actually performed bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

Should CONSULTANT be in default of any covenant or condition hereof, SUCCESSOR AGENCY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

Section 14. NON-DISCRIMINATION.

CONSULTANT shall not discriminate against any employee or applicant for employment because of sex, race, color, age, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation. CONSULTANT will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, age, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by SUCCESSOR AGENCY setting forth the provisions of this non-discrimination clause.

Section 15. GENERAL CONDITIONS.

CONSULTANT knows of no interests where it holds nor of any relationship it has or may have that would constitute a conflict of CONSULTANT performing the duties set forth in this Agreement solely in the best interest of SUCCESSOR AGENCY.

Section 16. OFFICE SPACE AND CLERICAL SUPPORT.

CONSULTANT shall provide its own office space and clerical support at its sole cost and expense.

Section 17. CONFIDENTIAL RELATIONSHIP.

SUCCESSOR AGENCY may from time to time communicate to CONSULTANT certain information to enable CONSULTANT to effectively perform the services. CONSULTANT shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of SUCCESSOR AGENCY. CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Section 17, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information (ii) is, through no fault of CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent of SUCCESSOR AGENCY. In its performance hereunder, CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Section 18. MEDIATION.

In the event of a dispute between SUCCESSOR AGENCY and CONSULTANT concerning the terms of this Agreement or its performance, the PARTIES may, but are not required to, agree to submit such dispute to mediation. If both PARTIES agree to mediation, SUCCESSOR AGENCY and CONSULTANT agree to cooperate in good faith to promptly select a mediator, to schedule a mediation session, and to attempt to settle the claim or dispute through mediation.

Section 19. NOTICES.

All communications to either party by the other party shall be deemed made when received by such party at its respective name and address, as follows:

Andy Hall
Executive Director
Imperial Beach Redevelopment Agency
Successor Agency
825 Imperial Beach Blvd.
Imperial Beach CA 91932

Kendall D. Berkey
Kane, Ballmer & Berkman
402 West Broadway, 4th Floor
San Diego, CA 92101

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) business days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

Section 20. CALIFORNIA LAW; VENUE.

This Agreement and its performance shall be governed, interpreted, construed, and regulated by the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the County of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure Section 394.

Section 21. ENTIRE AGREEMENT.

This Agreement, and its Exhibits, set forth the entire understanding of the PARTIES. There are no other understandings, terms or other agreements expressed or implied, oral or written. In the event there are conflicting provisions between the Agreement and any Exhibits, the Agreement provisions shall take precedence. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

Section 22. SEVERABILITY.

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement shall continue in full force and effect.

Section 23. TIME IS OF ESSENCE.

Time is of the essence for each and every provision of this agreement that states a time for performance and for every deadline imposed by the PROJECT COORDINATOR.

Section 24. COMPLIANCE WITH LAW.

CONSULTANT shall comply with applicable laws in effect at the time the services are performed hereunder which, to the best of its knowledge, information and belief, apply to its obligations under this Agreement.

Section 25. STATEMENT OF EXPERIENCE.

By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to SUCCESSOR AGENCY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

Section 26. CONFLICTS OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.

During the term of this Agreement, CONSULTANT shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the SUCCESSOR AGENCY. CONSULTANT shall at all times comply with the applicable terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the SUCCESSOR AGENCY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the Agency.

CONSULTANT shall comply with all of the applicable reporting requirements of the Political Reform Act and local ordinance. Specifically, within 30 days of receiving notice from the SUCCESSOR AGENCY that CONSULTANT has been determined by the SUCCESSOR AGENCY to have a reporting requirement under the Political Reform Act, CONSULTANT shall file Statements of Economic Interest with the City Clerk of the SUCCESSOR AGENCY in a timely manner on forms which CONSULTANT shall obtain from the City Clerk .

Section 27. NO WAIVER.

No failure of either the SUCCESSOR AGENCY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

Section 28. DRAFTING AMBIGUITIES.

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

Section 29. CONFLICTS BETWEEN TERMS.

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

Section 30. EXHIBITS INCORPORATED.

Exhibits "A" through "B" are incorporated into the Agreement by this reference.

Section 31. SIGNING AUTHORITY.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF the PARTIES hereto have executed this Agreement the day and year first hereinabove written.

IMPERIAL BEACH
REDEVELOPMENT AGENCY
SUCCESSOR AGENCY

CONSULTANT/CONSULTANT:
Kane, Ballmer & Berkman

Andy Hall, Executive Director

Kendall D. Berkey, Special Counsel

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Jennifer Lyon, Agency Counsel

Gregory Wade, Deputy Executive Director

EXHIBIT "A"

SCOPE OF SERVICES

When and as directed by the SUCCESSOR AGENCY, the CONSULTANT shall perform legal services for and on behalf of the SUCCESSOR AGENCY in connection with the SUCCESSOR AGENCY's responsibilities, proceedings or actions under the California Community Redevelopment Law and the Dissolution Act (defined herein as Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.), as amended and as may be amended), including, without limitation, rendering legal advice and consultation; furnishing written legal opinions; providing legal reviews and approvals of documents and instruments; negotiating, drafting and/or preparing legal documents and instruments; attending hearings, meetings, or other proceedings as necessary or required; and providing litigation services as necessary or required.

EXHIBIT "B"
Rate Schedule

KANE, BALLMER & BERKMAN,
A Law Corporation

PUBLIC RATE SUMMARY

Senior Principal	\$275/hour
Of Counsel	\$275/hour
Principal	\$275/hour
Senior Counsel	\$250/hour
Senior Associate	\$225/hour
Associate	\$200/hour
Paralegal	\$125/hour
Case Clerk	\$100/hour

CLASSIFICATION OF ATTORNEYS AND OTHER PROFESSIONALS

<u>Name</u>	<u>Status</u>	<u>Billable Rate</u>
Murray O. Kane	Senior Principal	\$275/hour
Royce K. Jones	Senior Principal	\$275/hour
Susan Y. Apy	Principal	\$275/hour
Kendall DeMatteo Berkey	Principal	\$275/hour
Gleim F. Wasserman	Of Counsel	\$275/hour
Donald P. Johnson	Of Counsel	\$275/hour
Bruce Gridley	Senior Counsel	\$250/hour
Deborah L. Rhoads	Senior Counsel	\$250/hour
Todd C. Mooney	Senior Associate	\$225/hour
Guillermo A. Frias	Senior Associate	\$225/hour
Gustavo Lamanna	Associate	\$200/hour
Edward B. Kang	Associate	\$200/hour

NOTE: The same hourly rate is applicable to Court appearances.