

RESOLUTION NO. 2012-87

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING LEGAL SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF ROHNERT PARK, IN ITS CAPACITY AS
SUCCESSOR AGENCY FOR THE COMMUNITY DEVELOPMENT COMMISSION OF
THE CITY OF ROHNERT PARK (“SUCCESSOR AGENCY”)
AND BETSY STRAUSS (“ATTORNEY”)**

WHEREAS, The City of Rohnert Park serves as the Successor Agency to the former Rohnert Park Community Development Commission (CDC), which was dissolved in February 2012, pursuant to State legislation ABx1 26, the “Dissolution Act;”

WHEREAS, the Dissolution Act required the formation of an Oversight Board (“Board”) to oversee the Successor Agency's winding down of the affairs of the former CDC;

WHEREAS, Health and Safety Code Section 34179(c) provides for the Successor Agency to staff the Board;

WHEREAS, the Board determined that because of the potential for conflicts between the interests of the City and the interests of the Board, the Board would seek outside legal counsel, instead of the Successor Agency directly providing legal counsel to the Board;

WHEREAS, the Board does not have contracting authority, but may direct the City Manager of the Successor Agency City of Rohnert Park to contract legal services for the Board;

WHEREAS, the City of Rohnert Park Municipal Code Title 3 Chapter 3.04 provides that the City's purchasing functions shall be governed by the City's purchasing policy;

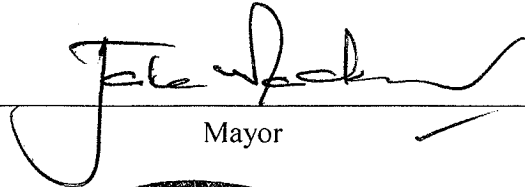
WHEREAS, at its regular meeting on June 22, 2012, the Board reviewed a draft legal services agreement by and between the City of Rohnert Park acting in its capacity as Successor Agency for the Community Development Commission of the City of Rohnert Park and Betsy Strauss, and directed staff to pursue formal approval of the agreement by the Successor Agency City of Rohnert Park.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Rohnert Park acting in its capacity as Successor Agency, authorizes and approves a Legal Services Agreement by and between the City of Rohnert Park, in its capacity as Successor Agency for the Community Development Commission of the City of Rohnert Park and Betsy Strauss (“Agreement”), for a not-to-exceed cost of \$25,000.00.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute this agreement in substantially similar form as shown on attached Agreement, as approved by the City Attorney, on behalf of the City of Rohnert Park.

DULY AND REGULARLY ADOPTED this date of July 24, 2012.

CITY OF ROHNERT PARK



Mayor

ATTEST:



City Clerk



AHANOTU: AYE BELFORTE: AYE CALLINAN: ABSENT STAFFORD: AYE MACKENZIE: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

LEGAL SERVICES AGREEMENT

This Agreement dated as of July _____, 24 ____, 2012, is made by and between the City of Rohnert Park, in its capacity as Successor Agency for the Community Development Commission of the City of Rohnert Park ("Successor Agency") and Betsy Strauss ("Attorney"). This Agreement is required by Business and Professions Code Section 6148 and is intended to fulfill its requirements.

RECITALS

WHEREAS, Attorney specializes in public agency law and has significant experience and recognized expertise in that area, and;

WHEREAS, Successor Agency has determined that Attorney's assistance is needed in connection with providing legal services and advice on an as-needed basis to the Successor Agency's Oversight Board;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Services. Attorney will provide advisory and representation services to Successor Agency's Oversight Board upon request.
2. Compensation. Compensation to Attorney for services shall be at the rate of \$225 per hour. Total compensation to Attorney under this Agreement shall not exceed Twenty Five Thousand Dollars (\$25,000).
3. Term. The term of this Agreement shall commence upon the Effective Date and shall terminate on June 30, 2013.
4. Standard of Care. Successor Agency has relied on the professional ability, professional experience, and training of Attorney as a material inducement to enter into this Agreement. Attorney warrants that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance by Agency of work performed by Attorney shall not operate as or be interpreted to be a waiver or release.
5. Non-Reimbursable Services. Attorney shall not be reimbursed for any of the following expenses:
 - a. Travel expenses, except to the extent approved in accordance with Section 6 below.

- b. Messenger or express mail charges.
- c. Normal overhead functions such as word processing or typing time, scheduling of depositions, ordering records, calendaring functions, filing, indexing, proofreading or copying time, or any other procedures that are of a secretarial nature.
- d. Meals, overtime, office supplies, or attorney time for preparation of bills or audit responses.
- e. Expenses for experts or consultants that have been retained without the prior written approval of the Oversight Board.
- f. Photocopying charges.
- g. Office supplies, local telephone charges, per-page fax charges, conference call line charges, routine mail, etc.
- h. Intra-office conferencing time of more than one attorney for routine matters, unless such conference involves expert opinion.
- i. Replacement attorney learning time or other ramp-up learning costs.
- j. Travel time.
- k. Charges/fees for use of computer research programs (e.g. Lexis Nexis, WestLaw, etc.).

6. Direction and Extraordinary Expenses. All direction and control of Attorney's work will be by the Oversight Board. Attorney shall seek pre-approval from the Oversight Board for all extraordinary expenses before the same is incurred by Attorney. By way of example, extraordinary expenses shall include expenses for preparing complex motions, undertaking significant legal research or substantial drafting, retaining experts and consultants, and out-of-town travel.

7. Termination. This Agreement may be terminated by Successor Agency at any time, subject to equitable proportional payments due to Attorney. All files, written material, and documents will be transferred to the Successor Agency upon such termination. Attorney will be available to consult with Successor Agency or, should one be retained, with the Successor's Agency's new attorney with respect to facts and circumstances of any matters previously worked on by Attorney for a reasonable period of time following such termination.

8. Withdrawal. Attorney may withdraw as permitted under the Rules of Professional Conduct of the State Bar of California.

9. Status of Attorney. The parties intend that Attorney, in performing the services under this Agreement, shall be an independent contractor and shall control the work and the manner in which it is performed. Attorney shall acquire no rights or status in the service of Successor Agency. Attorney is not to be considered an agent or employee of Successor Agency and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits Successor Agency provides its employees. In the event Successor Agency exercises its right to terminate this Agreement pursuant to the terms herein, Attorney expressly agrees that she shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

10. Modification. If, during the term of this Agreement, it becomes necessary to amend or add to its terms, conditions, scope or requirements, such amendment or addition shall only be made after mutual agreement of Attorney and Successor Agency and by way of execution of a written modification to this Agreement.

11. Insurance. With respect to performance of work under this Agreement, Attorney shall maintain Commercial General Liability Insurance on a standard occurrence form, no less broad than ISO form CBG 00 01 with minimum limits of \$1,000,000 per Occurrence; \$2,000,000 General Aggregate and Automobile Liability Insurance with minimum limit of \$300,000 Combined Single Limit Per Accident; or Bodily Injury; \$100,000 per person/\$300,000 per accident and Property Damage: \$50,000 per accident.

12. Indemnity. Attorney agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless, and release Successor Agency, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Attorney, arising out of or in connection with the negligent performance or willful misconduct of Attorney hereunder, whether or not there is concurrent negligence on the part of Successor Agency, but excluding liability due to the sole or active negligence or due to the willful misconduct of Successor Agency. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Attorney or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. In addition, Attorney shall be liable to Successor Agency for any loss or damage to Successor Agency property arising from or in connection with Attorney's negligent performance or willful misconduct hereunder.

13. Rules of Professional Conduct. Nothing contained herein shall be construed to relieve Attorney of her obligations under the Rules of Professional Conduct.

14. Merger. This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this agreement will be binding on the parties.

15. Taxes. Attorney agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Attorney agrees to indemnify and hold Successor Agency harmless from any liability which it may incur to the United States or to the State of California as a consequence of Attorney's failure to pay, when due, all such taxes and obligations. If Successor Agency is audited for compliance regarding any withholding or other applicable taxes, Attorney agrees to furnish the Successor Agency with proof of payment of taxes on these earnings.

16. Conflict of Interest. Attorney covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services hereunder. Where the Successor Agency deems that there is an actual or potential conflict of interest in Attorney representing another party in a matter, the Successor Agency must waive any such actual or potential conflict before Attorney may represent such other party.

17. Nondiscrimination. Attorney shall comply with all applicable federal, state, and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis, including without limitation the Successor Agency's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

18. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

19. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail shall be addressed as follows:

Successor Agency: City of Rohnert Park
130 Avram Avenue
Rohnert Park, California 94928
Attention: City Manager

Attorney: Betsy Strauss
1595 King Avenue
Napa, California 94559

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of

the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

20. No Waiver of Breach. The waiver by the Successor Agency of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

21. Applicable Law and Forum. This Agreement shall be construed and interpreted according to California Law, and any action or proceeding to enforce this Contract or for the breach thereof shall be brought or tried in the County of Sonoma.

22. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

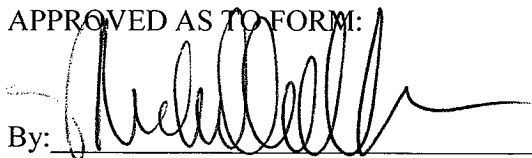
CITY OF ROHNERT PARK, as Successor Agency to the former Community Development Commission of the City of Rohnert Park ATTORNEY

By: _____
City Manager

By: _____
Betsy Strauss

Date: _____

Date: _____

APPROVED AS TO FORM:
By: 
City Attorney

Date: _____

ATTEST:

By: _____
City Clerk