

OVERSIGHT BOARD RESOLUTION NO. 2013- 002

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF SAN BUENAVENTURA RETAINING JENKINS & HOGIN LLP FOR AS-NEEDED LEGAL COUNSEL TO THE OVERSIGHT BOARD.

WHEREAS, the California State Legislature enacted Assembly Bill 1X 26 (the "Dissolution Act") to dissolve all redevelopment agencies in the State of California; and

WHEREAS, on January 30, 2012, and pursuant to Health and Safety Code Section 34173, the City Council of the City of San Buenaventura (the "City Council") declared that the City of San Buenaventura, a California charter city (the "City"), would act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the City of San Buenaventura (the "Redevelopment Agency"), effective February 1, 2012; and

WHEREAS, on February 1, 2012, the Redevelopment Agency was dissolved pursuant to Health and Safety Code Section 34172; and

WHEREAS, the Oversight Board to the Successor Agency to the dissolved Redevelopment Agency has been appointed pursuant to the provisions of Health & Safety Code Section 34179; and

WHEREAS, the Oversight Board determined that retaining an as-needed legal counsel is necessary in order to carry out its duties and responsibilities under the Dissolution Act; and

WHEREAS, the Successor Agency shall pay for all of the costs of meetings of the Oversight Board under the Dissolution Act; and

WHEREAS, on May 17, 2012, the Successor Agency released a Request for Qualifications ("RFQ") for redevelopment dissolution counsel, and eleven responses were received; and

WHEREAS, the RFQ evaluation panel unanimously decided the law firm of Jenkins & Hogin, LLP is qualified by experience and is able to perform the services desired by the Oversight Board; and

WHEREAS, Karl H. Berger from Jenkins & Hogin LLP is willing to serve as the designated attorney to perform legal services desired by the Oversight Board; and

WHEREAS, this resolution does not constitute a waiver of any other restrictions under the California Rules of Professional Conduct, and specifically does not include a waiver of Rule 3-31(C);

BE IT RESOLVED by the Oversight Board of the Successor Agency to the Former Redevelopment Agency of the City of San Buenaventura as follows:

SECTION 1. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 2. The Oversight Board retains the services of Jenkins & Hogin, LLP (the "Firm") for as-needed legal counsel and approves the execution of the Legal Services Agreement as attached hereto as Exhibit "A" and incorporated herein by this reference.

SECTION 3. Karl H. Berger is designated General Counsel to the Oversight Board to perform the legal services.

SECTION 4. The Community Development Director for the City of San Buenaventura, or designee, may, with the concurrence of the Oversight Board Chairperson, request legal services from the General Counsel to provide legal advice on all matters affecting the Oversight Board. The cost of such legal services cannot exceed one thousand dollars (\$1000) without additional approval from the Oversight Board.

SECTION 5. Pursuant to the Dissolution Act, the Successor Agency is responsible for paying the fees and costs associated with the Oversight Board's retention of legal counsel subject to Health and Safety Code Section 34177.3(b).

PASSED and ADOPTED on the 1 day of March, 2013.


Chairperson
Oversight Board of the Successor
Agency to the San Buenaventura
Redevelopment Agency

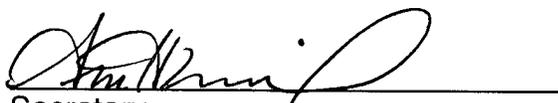

Secretary

EXHIBIT "A"

OVERSIGHT BOARD OF THE SUCCESSOR AGENCY

TO THE REDEVELOPMENT AGENCY

OF THE CITY OF SAN BUENAVENTURA

[See following document]

**LEGAL SERVICES AGREEMENT
LITIGATION SERVICES**

**Successor Agency of the Former Redevelopment
Agency of the City of San Buenaventura
and
Jenkins & Hogin, LLP**

This Agreement is made and entered in duplicate on the dates set forth below by and between the Successor Agency of the Former Redevelopment Agency of the City of San Buenaventura, a municipal corporation ("City") and Jenkins & Hogin, LLP ("Law Firm").

By this Agreement, City agrees to engage the services of Law Firm, and Law Firm agrees to perform services for the City that are hereinafter described, all for the compensation and subject to the covenants and conditions hereinafter set forth:

1. Law Firm's Services.

Law Firm will represent the City as follows:

General Counsel Services to the Oversight Board of the Successor Agency of the former Redevelopment Agency of the City of San Buenaventura

2. Law Firm's Personnel.

(a) **Lead Attorney:** All services to be provided by Law Firm to City pursuant to this Agreement will be performed by or under the direction of the following attorney: Karl H. Berger.

(b) **Assisting Attorneys.** Additional attorneys who will assist the lead attorney in performing the services provided by Law Firm to City pursuant to this Agreement will include the following: Robert M. Smith

(c) **Living Wage Requirements.** Law Firm understands and agrees that this Agreement is subject to the provisions of Chapter 2.525 of the San Buenaventura Municipal Code entitled, "Living Wages and Benefits for City Services," a copy of which has been provided to Law Firm. By reason thereof, during the term of this Agreement, Law Firm will pay and/or provide the wages and/or benefits required therein to all of its employees engaged in whole or in part in performing the services provided for by this Agreement. Moreover, Law Firm will require any of its successors, assigns, and subcontractors who receive any compensation or other emoluments arising out the performance of the services provided for by this Agreement to similarly pay and/or provide such wages and/or benefits to all of their employees engaged in whole or in part in performing such services. Law Firm also understands and agrees that any violation of Chapter 2.525 of the San Buenaventura Municipal Code will be deemed to be a material breach of this Agreement entitling City to suspend or terminate this Agreement and/or impose the civil penalties provided for by Section 2.525.400 of Chapter 2.525.

(d) Conflicts of Interest. Law Firm represents that neither Law Firm nor any of the attorneys or other persons employed by Law Firm have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of City that may be affected by the services to be provided to City pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public. Law Firm further agrees that no attorney or other person having any such interest shall be employed by Law Firm while this Agreement remains in effect. If Law Firm or an attorney or other person employed by Law Firm acquires such an interest while this Agreement remains in effect, Law Firm will immediately disclose such interest to City's Representative, and the interested individual shall not participate in or influence the performance of the services to be provided to City pursuant to this Agreement.

In addition to the prescriptions regarding conflicts of interest imposed on attorneys by the California Business and Professions Code, and by Rule 3-310 of the California Rules of Professional Conduct, Law Firm agrees that unless waived by City's Representative in writing, neither Law Firm nor any attorney employed by Law Firm shall represent clients before any board, commission, committee or department of City, or represent a client adverse to City for a period of one year from the date of the completion of the services to be provided to City pursuant to this Agreement or the early termination of such services in the manner hereinafter provided by this Agreement.

3. Law Firm's Compensation.

(a) Legal Fees. City shall compensate Law Firm for the professional services to be provided by Law Firm to City pursuant to this Agreement at the followings hourly rates:

	<u>Hourly Rate</u>
Attorneys:	\$225/hour

All office, travel, and meeting time shall be billed at such rates in increments not exceeding one tenth (.1) of an hour.

Law Firm shall not charge City for more than one attorney's time for appearances at a court proceeding, deposition, or meeting with third parties, unless City's Representative has expressly authorized the use of more than one attorney for such appearances.

(b) Cost and Expense Reimbursement. City will also reimburse Law Firm for all ordinary costs and expenses reasonably incurred by Law Firm, its attorneys, and employees in performance of the service provided by Law Firm to City pursuant to this Agreement, including costs associated with: (i) the service of legal process; (ii) depositions; (iii) document reproduction; (iv) postage and messenger services; and (v) telephone, fax, and other telecommunication services.

In addition, when approved in advance by City's Representative, City will reimburse Law Firm for any extraordinary expenses incurred by Law Firm in the

performance of such services, including, but not limited to: (i) on-line electronic research; (ii) investigators, expert witnesses, and other professional Consultants and, (iii) travel outside of the State of California.

However, City will not reimburse Law Firm for any costs and expenses incurred by Law Firm for: (i) secretaries, clerks, and other nonprofessional employees engaged in the performance of Law Firm Services pursuant to this Agreement; or (ii) time spent by professional or non-professional employees when responding to City's inquiries regarding Law Firm's bills.

(c) **Billing.** Law Firm will bill City monthly for the services provided by Law Firm to City pursuant to this Agreement, as well as all reimbursable costs and expenses. All bills for legal fees shall set forth in detail the work performed during the billing period in line item format, so that each task is separately explained and has specific time recorded.

Bills for reimbursable costs and expenses incurred during the billing period shall set forth the amount charged for each category of such costs and expenses in addition to the total amount of all such costs and expenses. If the bill includes charges for document reproduction costs that exceed one hundred dollars (\$100) during any 30-day period, Law Firm will provide a justification for such costs along with its bill. In addition, if the bill includes costs incurred for services provided by outside vendors, Law Firm will provide a copy of the vendor's invoice or other billing statement with Law Firm's bill.

(d) **Payment.** City will pay Law Firm for all of Law Firm's services, costs and expenses provided or incurred pursuant to this Agreement following the receipt and approval of a bill for such services, costs and expenses that complies with the provisions of this Agreement. City shall make its best effort to process and pay such bill within 30 days of the receipt of the bill. In the event City fails to process and pay a bill within such 30-day period, it will not be liable for any interest or finance charge arising out of such delinquency.

(e) **Taxpayer Information.** Law Firm agrees to attach a completed W-9 Form to this Agreement to facilitate tax reporting for payments made by City to Law Firm pursuant to this Agreement.

(f) **Litigation Budget.** Law firm shall prepare a litigation budget within 15 days outlining projected attorney time for investigation, responsive pleadings, motions, discovery, and legal research up to but not including trial.

(g) **Do Not Exceed Limit.** In no event shall City's obligation under this Agreement exceed \$15,000 without written amendment to this Agreement.

4. Limitations on Representation.

In the course of its representation of City in the litigation that is the subject of this Agreement, Law Firm shall not take any of the following actions without the prior consent of City's Representative:

(a) Disqualify any judge assigned to preside at any trial, hearing, status conference, settlement conference or other proceeding pertaining to the litigation;

(b) Agree to any mediation or arbitration on any matter at issue in the litigation except where mediation or arbitration is required by a court rule or order;

(c) File an appeal from an adverse judgment entered by the court in the litigation, or file a writ seeking appellate review of any interlocutory order or ruling of the court; and

(d) Propose or agree to any settlement of the litigation.

5. Reports.

In the course of its representation of the City in the litigation that is the subject of this Agreement, Law Firm shall provide City's Representative with the following litigation reports:

(a) A written status report containing all of the following information promptly following the execution of this Agreement and during the month of July in each year that this Agreement remains in effect unless waived by City's Representative:

(i) The name and a very brief description of the litigation;

(ii) The current procedural status of the litigation;

(iii) If the City appears as a plaintiff or cross-complainant in the litigation, a concise statement of each claim for relief sought by Law Firm on behalf of City in the litigation, and an evaluation of City's ability to prevail on the claim or claims;

(iv) If the City appears as a defendant or cross defendant in the litigation, a statement of the relief sought by the plaintiff or cross complainant, and an evaluation of City's liability with respect to the claim or claims; and,

(v) An evaluation of the prospects for settlement as well as an estimate of the settlement value of the litigation.

(b) A written or oral report on any material change in Law Firm's evaluation of the litigation that is the subject of this Agreement, promptly following the date Law Firm becomes aware of law or facts that cause the change in Law Firm's evaluation of the litigation.

(c) Such other oral or written reports regarding the litigation as may be requested by City's Representative.

6. Files.

Law Firm agrees that all legal files maintained by Law Firm pertaining to the services provided to City pursuant to this Agreement are and shall remain the property of City. However, Law Firm shall have the right to retain copies of such files upon completion of the services provided for by this Agreement, or upon the earlier termination such services in the manner hereinafter provided in this Agreement. For purposes of this Agreement the term "files" shall include electronic files and data, as well as paper files that are maintained by Law Firm in the performance of the services required by this Agreement. Insurance.

7. Insurance

(a) Law Firm agrees that at all times it is providing services to City pursuant to this Agreement, it will maintain an errors and omissions insurance policy in full force and effect that conforms to all of the following requirements:

- (i) The policy shall include coverage for professional negligence in the performance of the services required by this Agreement and shall be in the amount of at least \$1,000,000.
- (ii) The policy shall be issued by an insurer that is authorized to do business in the State of California, and rating in "Best's" Insurance Guide of at least "A:VII."
- (iii) The insurance coverage provided by the policy shall be on a "claims made" basis. When coverage is provided on a "claims made" basis, Law Firm shall continue to maintain such type of insurance in effect for a period of three (3) years after this Agreement expires or is terminated (hereinafter the "extended insurance"). Such extended insurance shall have the same coverage and limits as the policy that was in effect during the term of this Agreement, and shall cover Law Firm for all claims made by City arising out of any errors or omissions of Law Firm during the time this Agreement was in effect.

(b) Concurrently with the execution of this Agreement, Law Firm will provide City with evidence of such insurance policy and coverage, satisfactory to City, consisting of a certificate of insurance and a copy of the specimen form. The certificate insurance must reflect that the insurer will provide City with 30 days notice of any cancellation of coverage. Law Firm shall require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

(c) Upon the expiration of any policy of insurance required herein, Law Firm shall provide City with evidence that such insurance has been renewed or replaced with another policy providing at least the same coverage. Such evidence of insurance will be furnished at least 72 hours before expiration of coverage.

(d) The insurance requirements in this Section are not intended as a limitation on insurance coverage, nor a Waiver of any coverage normally provided by any insurance policy issued to Law Firm. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

8. Indemnification.

Law Firm shall hold City and City's officers, employees, agents, and volunteers harmless and free from any and all claims or liabilities or expenses, including attorney's fees, caused by Law Firm's negligent or wrongful performance of its services pursuant to this Agreement, save and except for any such claim, liability, or expense arising out of the willful misconduct, sole negligence or concurrent active negligence of City and/or City's officers, employees, agents, or volunteers. In the event City and/or any of City's officers, employees, agents, or volunteers are named in any lawsuit, or should any claim be made against it or any of them by lawsuit or otherwise arising out of or relating to Law Firm's performance of its services pursuant to this agreement, other than a lawsuit or claim arising out of their willful misconduct, sole negligence or concurrent active negligence, Law Firm shall reasonably defend and indemnify them for any judgment rendered against them.

9. City's Representative

The name, address, and telephone number of City's Representative is as follows:

Name and Title:	Ariel Pierre Calonne, City Attorney
Post Office Address:	501 Poli Street, P.O. Box 99, Ventura, CA 93002
E-mail Address:	acalonne@ci.ventura.ca.us
Telephone No.:	(805) 654-7818

10. Termination of Services

City may terminate this Agreement with or without cause at any time by serving Law Firm with notification of such termination by mail, by fax, or by City's Representative's oral notice of termination followed by written confirmation of same served on Law Firm by mail. Law Firm may also terminate this Agreement with or without cause by serving City's representative with notification of such termination by mail or by fax at least 30 days prior to the date the termination is to become effective unless facts or circumstances would render such a notice period unreasonably long. Except that Law Firm may not terminate this Agreement without City's written consent in the course of any trial in which Law Firm is representing City, or within 90 days of any scheduled trial in which Law Firm is to represent City, unless facts or circumstances would render such a long notice period unreasonably long, in which case notice shall be provided a reasonable time in advance based on the facts and circumstances.

11. Entire Agreement

This Agreement represents the entire understanding and agreement between Law Firm and the City with regard to the legal services to be provided by Law Firm to

City as described herein, and all preliminary negotiations or agreements leading to the formation of this Agreement are superseded by this Agreement except as expressly set forth herein. No collateral understandings or agreements hereafter made by the parties hereto or by any of their officers, employees, or agents shall be deemed to vary the terms of this Agreement unless and until this Agreement is modified to reflect such understandings and agreements in the manner provided herein.

12. Modification of Agreement.

This Agreement and the provisions set forth herein may be modified only by way of a written amendment to this Agreement that has been approved and executed by and on behalf of both Law Firm and City.

In witness whereof, the parties have executed this Agreement in the State of California on the dates set forth below.

CITY OF SAN BUENAVENTURA



Ariel Pierre Calonne
City Attorney

1-14-13

Date

JENKINS & HOGIN, LLP

Karl H. Berger
Partner

Date

City Budget Program and Account No.

52301-99200-99200-100