

OVERSIGHT BOARD RESOLUTION NO. 2013-05

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO PROFESSIONAL SERVICES AGREEMENT (AFFORDABLE HOUSING CONSULTING AND TECHNICAL SERVICES) KEYSER MARSTON ASSOCIATES (FOR SERVICES OVER \$30,000 - INSURANCE REQUIRED) (TERM: MAY 1, 2013 THROUGH APRIL 30, 2015 NOT TO EXCEED \$100,000)

WHEREAS, the Community Development Agency of the City of Mission Viejo ("Agency") was established as a redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.* ("CRL"), and previously authorized to transact business and exercise powers of a redevelopment agency pursuant to action of the City Council of the City of Mission Viejo ("City"); and

WHEREAS, Assembly Bill x1 26 chaptered and effective on June 27, 2011 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code, which caused the dissolution of all redevelopment agencies and winding down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484 chaptered and effective on June 27, 2012 (together, the "Dissolution Act"); and

WHEREAS, as of February 1, 2012 the Agency was dissolved pursuant to the Dissolution Act and as a separate legal entity the City serves as the Successor Agency to the Community Development Agency of the City of Mission Viejo ("Successor Agency"); and

WHEREAS, the Successor Agency administers the enforceable obligations of the former Agency and otherwise unwinds the Agency's affairs, all subject to the review and approval by a seven-member oversight board ("Oversight Board"); and

WHEREAS, pursuant to Section 34179 the Successor Agency's Oversight Board has been formed and the initial meeting has occurred on March 29, 2012 and

WHEREAS, Section 34179 provides that the Oversight Board has fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188 of Part 1.85 of the Dissolution Act; and

WHEREAS, Section 34171(d)(1)(F) defines "enforceable obligation" to include: "Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part,..."; and

WHEREAS, the Successor Agency desires to enter into that certain *Professional Services Agreement (Affordable Housing Consulting and Technical Services) Keyser Marston Associates (For Services Over \$30,000 - Insurance Required) (Term: May 1, 2013 through April 30, 2015 Not to Exceed \$100,000)* ("Agreement"); and

WHEREAS, the Oversight Board has reviewed the Agreement and desires to authorize the Successor Agency to enter into such agreement, to cause posting of this Resolution on the Successor Agency website, and to direct transmittal thereof with a copy of such contract to the County Auditor-Controller and Department of Finance ("DOF"); and

WHEREAS, pursuant to Section 34179(h) as amended by Assembly Bill 1484, written notice and information about all actions taken by the Oversight Board shall be provided to the

DOF by electronic means and in a manner of DOF's choosing, and an Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO:

Section 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

Section 2. Pursuant to the Dissolution Act, the Oversight Board authorizes the Successor Agency to enter into the *Professional Services Agreement (Affordable Housing Consulting and Technical Services) Keyser Marston Associates (For Services Over \$30,000 - Insurance Required) (Term: May 1, 2013 through April 30, 2015 Not to Exceed \$100,000)*, which is incorporated herein by this reference.

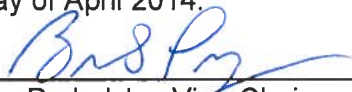
Section 3. The Oversight Board authorizes transmittal of such contract to the County Auditor-Controller and DOF.

Section 4. The City Treasury Manager of the Successor Agency or an authorized designee is directed to post this Resolution on the Successor Agency website pursuant to the Dissolution Act.

Section 5. Pursuant to Section 34179(h) as amended by Assembly Bill 1484, written notice and information about all actions taken by the Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF's choosing. An Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

Section 6. The Secretary of the Oversight Board shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED this 24th day of April 2014.



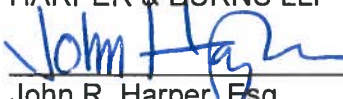
Brian Probolsky, Vice-Chair
Oversight Board of the Successor Agency to the
Community Development Agency of the City of
Mission Viejo

ATTEST:



Sherry Merrifield, Secretary
Oversight Board of the Successor Agency
to the Community Development Agency of the City of Mission Viejo

APPROVED AS TO FORM:
HARPER & BURNS LLP



John R. Harper, Esq.
Oversight Board Counsel

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF MISSION VIEJO)

I, Sherry Merrifield, Secretary of the Oversight Board of the Successor Agency to the Community Development Agency of the City of Mission Viejo, hereby certify that the foregoing resolution was duly adopted by the Oversight Board at a regular meeting held on the 24th day of April 2013, and that it was so adopted by the following vote:

AYES: Board Member Butterfield, Board Member Dyas, Board Member Hampton, Vice-Chair Probosky and Board Member Reardon

NOES: None

ABSENT: Chair Breton and Board Member Fitzsimmons



Sherry Merrifield, Secretary
Oversight Board of the Successor Agency to the
Community Development Agency of the City of
Mission Viejo

**ATTACHMENT 1
to Oversight Board Resolution No. 2013-05**

***Professional Services Agreement (Affordable Housing Consulting and Technical
Services) Keyser Marston Associates (For Services Over \$30,000 - Insurance Required)
(Term: May 1, 2013 through April 30, 2015 Not to Exceed \$100,000)***

(attached)

**PROFESSIONAL SERVICES AGREEMENT
(AFFORDABLE HOUSING CONSULTING AND TECHNICAL SERVICES)
KEYSER MARSTON ASSOCIATES, INC.
(for services over \$30,000 - Insurance Required)
(Term: May 1, 2013 through April 30, 2015 not to exceed \$100,000)**

This **PROFESSIONAL SERVICES AGREEMENT (AFFORDABLE HOUSING CONSULTING AND TECHNICAL SERVICES) KEYSER MARSTON ASSOCIATES (for services over \$30,000 - Insurance Required) (Term: May 1, 2013 through April 30, 2015 not to exceed \$100,000)** (hereinafter referred to as "Agreement") is dated as of **April 24, 2013** (however the Term hereof commences May 1, 2013), and is entered into by and among the **MISSION VIEJO HOUSING AUTHORITY**, a public body corporate and politic ("MVHA"), the **SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF MISSION VIEJO**, a public body corporate and politic ("Successor Agency"), and **KEYSER MARSTON ASSOCIATES, INC.** a California corporation ("Consultant"). MVHA and Successor Agency may together be referred to as "Mission Viejo". Each individual party may be referred to herein as a "Party" and together as "Parties".

This Agreement was considered and action taken to approve this contract by the MVHA Board and Successor Agency on April 15, 2013; thereafter, pursuant to the Dissolution Act (as the term is hereinafter defined), this Agreement will be presented to and considered by the Oversight Board to the Successor Agency (as defined in the Dissolution Act) at the regular meeting of April 24, 2013 in order for the Oversight Board to consider and take action to authorize and affirm the Successor Agency entering into this Agreement; then, as to the Successor Agency as a Party, only, this Agreement will be submitted to the State of California, Department of Finance ("DOF") pursuant to the Dissolution Act (as the term is hereinafter defined) for the DOF's review and action.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. TERM. The term of this Agreement commences on **May 1, 2013** and shall remain and continue in effect until the Services described herein are completed, but in no event later than **April 30, 2015**, unless sooner terminated (or otherwise extended) all pursuant to the provisions of this Agreement ("Term").

2. SERVICES. During the Term, Consultant shall perform certain tasks and provide certain services as described and set forth in the Description of Services, **EXHIBIT A**, attached hereto and incorporated herein as though set forth in full, as requested and directed by Mission Viejo's authorized representatives, as set forth herein. Consultant shall complete the initial tasks relating to the set-up for ongoing monitoring and compliance of Mission Viejo's existing affordable housing projects and programs in accordance with and pursuant to a schedule of performance that are described in **EXHIBIT A**. Consultant also shall perform such other tasks, if any, as assigned and requested by Mission Viejo's authorized representatives relating to federal, state, and local affordable housing projects and programs, including without limitation planning, implementation, financial and economic analysis, monitoring, compliance, enforcement (together herein referred to as "Services").

3. PERFORMANCE. Consultant shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all Services. Consultant represents to Mission Viejo that each of its principals (and associates and other personnel authorized to provide Services hereunder) has

the experience, knowledge and qualifications necessary to perform and provide the Services. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. PAYMENT.

a. MVHA and/or Successor Agency, as applicable, agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Payment Schedule, **EXHIBIT B**, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the Services. This amount shall not exceed cumulatively exceed **One Hundred Thousand Dollars (\$100,000)** during the Term of this Agreement unless additional payment is approved in writing as provided in this Agreement. Any terms or conditions set forth on **EXHIBIT A** or **EXHIBIT B** that do not describe the Services to be performed, the payment rates and terms, or the payment schedule have not been agreed to by MVHA and/or Successor Agency, as applicable, shall not be deemed a part of this Agreement, except as authorized in advance and in writing by the MVHA Board or Successor Agency, as and when applicable, or, if pursuant to his authority, the Executive Director or authorized designee. The Executive Director of the MVHA and the Executive Director of the Successor Agency (herein, "Executive Director" in either or both capacity(ies)).

b. Consultant shall not be compensated for any Services rendered in connection with its performance of this Agreement that are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by MVHA and/or Successor Agency, as applicable, or, if pursuant to his authority, the Executive Director, or authorized designee. Consultant shall be compensated for additional services, if any, in the amounts and in the manner as agreed to by the Executive Director or other authorized representative and Consultant at the time of Mission Viejo's written authorization is given to Consultant for the performance of said services. The Executive Director may approve additional work not to exceed fifteen percent (15%) of the contract amount approved by MVHA and/or Successor Agency, as applicable, or \$30,000, whichever is less. Any additional services in excess of this amount shall be approved by the MVHA Board or Successor Agency, as applicable.

c. Consultant shall submit invoices to MVHA and/or Successor Agency, as applicable, monthly for Services actually performed. Invoices shall be submitted on or about the first business day of each month, for Services provided in the previous month. MVHA and/or Successor Agency, as applicable, will use its/their reasonable efforts and its/their general practice is to pay invoices within thirty (30) days of receipt of each invoice as to all undisputed fees. If MVHA and/or Successor Agency, as applicable, disputes any of Consultant's fees for Services, MVHA and/or Successor Agency, as applicable, shall use reasonable efforts to provide written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

d. Successor Agency is organized, operating and subject to Part 1.85 of Division 24 of the California Health and Safety Code, as established by Assembly Bill x1 26 enacted and effective June 27, 2011, the California Supreme Court's decision in *Matasantos v. California Redevelopment Agency* issued on December 29, 2011, and Assembly Bill 1484 enacted and effective June 27, 2012 (together, "Dissolution Act"). The Dissolution Act permits the Successor Agency to make payments for enforceable obligations and requires the Successor Agency to prepare a Recognized Obligation

Payment Schedule (“ROPS”) before each six-month fiscal period that lists its enforceable obligations. And, the Dissolution Act authorizes the Successor Agency to maintain existing and or enter into new contracts or agreements necessary for the administration or operation of the Successor Agency and its enforceable obligations, in accordance with Part 1.85, including, but not limited to, agreements costs of maintaining assets and compliance with enforceable obligations. Further, certain project-specific costs associated implementation of existing enforceable obligations are authorized to be incurred and paid from funds available to the Successor Agency under the Dissolution Act. Under this Agreement, as, if, and when the Successor Agency requests and directs tasks for the Services hereunder to be completed by Consultant for the Successor Agency, Consultant recognizes, acknowledges and agrees that payments to Consultant for such Services to the Successor Agency are subject to the requirements of the Dissolution Act.

e. Notwithstanding the above provisions, Consultant shall not be paid for, nor eligible to be paid for, any Services performed until Consultant has submitted to Mission Viejo a fully completed and executed Internal Revenue Service Form W-9.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

a. MVHA and/or Successor Agency, as applicable, each or all together may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) calendar days prior written notice of termination. MVHA and/or Successor Agency, as applicable, shall not be obligated to explain its reasons for termination. Upon receipt of said notice, the Consultant shall immediately cease performing any and all Services under this Agreement, unless the termination notice provides otherwise. If MVHA and/or Successor Agency, as applicable, suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section 5., MVHA and/or Successor Agency, as applicable, shall pay to Consultant the actual value of the Services performed up to the date of the termination notice, provided that the Services performed is of value to MVHA and/or Successor Agency, as applicable. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to MVHA and/or Successor Agency, as applicable, pursuant to Section 3.

6. DEFAULT OF CONSULTANT.

a. Consultant's failure to comply with any of the terms, conditions, or provisions of this Agreement shall constitute default. In the event that Consultant is in default for cause under the terms of this Agreement, MVHA and/or Successor Agency, as applicable, shall have no obligation or duty to continue compensating Consultant for any Services performed after the date of default and is hereby authorized to terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the Executive Director or authorized designee determines that the Consultant is in default in the performance of any of the terms, conditions, or provisions of this Agreement, MVHA and/or Successor Agency, as applicable, shall serve the Consultant with written notice of the default. Consultant shall have ten (10) business days after the date of such notice of default

in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, then MVHA and/or Successor Agency, as applicable, shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7. OWNERSHIP OF DOCUMENTS.

a. Consultant shall maintain complete and accurate records with respect to all Services performed, including without limitation records and receipts and account ledgers for costs, expenses, sales, receipts and other such information required by MVHA and/or Successor Agency, as applicable, that relate to the performance of Services under this Agreement. Consultant shall maintain adequate records of any and all Services provided in sufficient detail to permit an evaluation of Services and accounting therefor. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to representatives of MVHA and/or Successor Agency, as applicable, and their designees at reasonable times to such books and records, shall give Mission Viejo the right to examine and audit said books and records, shall permit Mission Viejo to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

b. At the earliest to occur of (1) the end of the Term hereof, (ii) completion of all Services, or (iii) termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services to be performed pursuant to this Agreement with the exception of Consultant's proprietary computer models shall become the sole property of MVHA and/or Successor Agency, as applicable, and may be used, reused or otherwise disposed of by Mission Viejo without the permission of or any notice to the Consultant. With respect to computer files with the exception of Consultant's proprietary computer models, Consultant shall make available to Mission Viejo, upon reasonable written request by Mission Viejo, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files relating to or arising from the Services under this Agreement.

c. If applicable, with respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

8. INDEMNIFICATION. Consultant agrees to defend, indemnify, protect and hold harmless MVHA and/or Successor Agency and their elected and appointed officials, officers, employees, counsels, and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature that MVHA and/or Successor Agency and their elected and appointed officials, officers, employees, counsels, and volunteers may sustain or incur or that may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent, intentional, or wrongful acts or omissions in performing or failing to perform under the terms, conditions, and provisions of this Agreement, excepting only liability arising out of the sole active negligence or intentional misconduct of Mission Viejo.

9. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Consultant, its officers, directors, employees, agents, representatives, or subcontractors.

Consultant agrees to provide insurance in accordance with the requirements set forth in the Insurance Requirements, **EXHIBIT C**, attached hereto and fully incorporated herein by this reference. If Consultant uses existing coverage to comply the requirements of **EXHIBIT C** and that coverage does not meet the requirements set forth in **EXHIBIT C**, Consultant agrees to amend, supplement or endorse the existing coverage to do so.

10. INDEPENDENT CONTRACTOR.

a. Consultant is and shall at all times remain as to Mission Viejo a wholly independent contractor. The persons, entities or other personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither MVHA and/or Successor Agency, as applicable, , nor any of their elected and appointed officials, officers, employees, counsels, or agents shall have control over the conduct of Consultant or any of Consultant's officers, directors, employees, agents, representatives and/or subcontractors, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, directors, employees, agents, representatives and/or subcontractors are in any manner officers, directors, employees, agents, representatives and/or subcontractors of Mission Viejo. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against Mission Viejo, or bind Mission Viejo, orally or in writing, in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees eligible to be paid to Consultant as provided in the Agreement, Mission Viejo shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Mission Viejo. Mission Viejo shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. LEGAL RESPONSIBILITIES. Consultant shall keep itself informed of applicable federal, state and local laws and regulations that in any manner affect the Services provided hereunder and any and all persons, entities or other personnel employed by Consultant or in any way affect the performance of its Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such applicable laws and regulations. MVHA and/or Successor Agency, as applicable, and their elected and appointed officials, officers, employees, counsels, or agents shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section 11.

12. RELEASE OF INFORMATION.

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Mission Viejo's prior written authorization, which authorization may be provided, or not provided in Mission Viejo's sole discretion. Consultant, its officers, directors, employees, agents, representatives and/or subcontractors, shall not without written authorization from the Executive Director or unless requested by the City Attorney or special counsel, voluntarily provide declarations, letters of support,

testimony at depositions, response to interrogatories or other information concerning the Services performed under this Agreement or relating to any project or property located within the incorporated boundaries of the City of Mission Viejo. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives Mission Viejo notice of such court order or subpoena.

b. Consultant shall promptly notify Mission Viejo should Consultant, its officers, directors, employees, agents, representatives and/or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any person regarding this Agreement and the Services performed hereunder or with respect to any project or property located within the City's boundaries. Mission Viejo retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Mission Viejo and to provide Mission Viejo with the opportunity to review any response to discovery requests provided by Consultant. However, Mission Viejo's right to review any such response does not imply or mean the right by Mission Viejo to control, direct, or rewrite said response.

13. NOTICES. Any notices which any Party may desire to give to any other Party or Parties under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable messenger document delivery service or overnight document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Postal Service (USPS), certified mail, postage prepaid, return-receipt requested, addressed to the address of the Party or Parties as set forth below or at any other address as that any Party may later designate by Notice to all other Parties:

To MVHA:	Mission Viejo Housing Authority 200 Civic Center Mission Viejo, California 92691 Attention: Executive Director
To Successor Agency:	Successor Agency to the Community Development Agency of the City of Mission Viejo 200 Civic Center Mission Viejo, California 92691 Attention: Executive Director
To Consultant:	Keyser Marston Associates 500 South Grand Avenue, Suite 1480 Los Angeles, CA 90071 Attention: Kathleen Head, Managing Principal

14. ASSIGNMENT. Consultant shall not assign all or any part of this Agreement or the performance obligations hereunder, nor any monies due hereunder, without prior written consent of Mission Viejo, which consent may be approved or denied in Mission Viejo's sole discretion. Because of the professional nature of the Services to be rendered pursuant to this Agreement, only *Keyser Marston Associates, Inc.* shall perform the Services described in this Agreement. *Keyser Marston Associates, Inc.* may use associates or other assistants, who shall be and remain under the

direct supervision of the managing principal or other assigned principal, to perform some of the Services under this Agreement. Consultant shall provide Mission Viejo fourteen (14) calendar days' notice prior to the departure, if such were to occur, of Kathleen Head, Managing Principal, from ownership and management of Keyser Marston Associates, Inc. Should such Managing Principal leave the Consultant entity's ownership and employment, Mission Viejo shall have the option, but no obligation, to immediately terminate this Agreement subject to Mission Viejo providing three (3) calendar days' written notice to the Consultant entity at the above address. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual Services performed by authorized personnel up to, and including, the date of the notice of termination or as may be otherwise agreed to in writing between Mission Viejo and the Consultant.

15. LICENSES. At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses, if any, required of it by law for the performance of the Services described in this Agreement.

16. GOVERNING LAW. Mission Viejo and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement.

17. LITIGATION. Any litigation or other legal action or proceeding concerning this Agreement shall take place in the Superior Court, County of Orange, State of California or the Federal Court with geographic jurisdiction over the City of Mission Viejo.

18. ENTIRE AGREEMENT. This Agreement contains the entire understanding between and among the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such party deems material.


19. AUTHORITY TO EXECUTE THIS AGREEMENT. The person or persons executing this Agreement on behalf of Consultant warrant/warrants and represent/represents that he or she or they has/have the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

[Remainder of page is blank. Agreement continued and signature blocks begin on next page.]

IN WITNESS, the Parties hereto have caused this *Professional Services Agreement (Affordable Housing Consulting and Technical Services) Keyser Marston Associates (for services over \$30,000 - Insurance Required) (Term: May 1, 2013 through April 30, 2015 not to exceed \$100,000)* to be entered into as of April 24, 2013.


CONSULTANT

KEYSER MARSTON ASSOCIATES, INC.,
a California corporation



By: Kathleen Head, Managing Principal

Date: May 9, 2013



By: James Kahn

Date: May 9, 2013


[two signatures required for corporation]

[signatures continue on next page]

[signatures continued from previous page]

MVHA:

MISSION VIEJO HOUSING AUTHORITY,
a public body corporate and politic

By: 
Dennis R. Wilberg, Executive Director
or Authorized Designee

ATTEST:



Secretary

APPROVED AS TO FORM


General Counsel

SUCCESSOR AGENCY:

**SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT
AGENCY OF THE CITY OF MISSION VIEJO,**

a public body corporate and politic
By: 
Dennis R. Wilberg, Executive Director
or Authorized Designee

ATTEST:


Secretary

APPROVED AS TO FORM

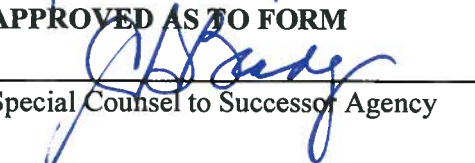

Special Counsel to Successor Agency

EXHIBIT A

DESCRIPTION OF SERVICES

(attachment from RFP proposal)

EXHIBIT B

PAYMENT SCHEDULE

(attachment from RFP proposal)

EXHIBIT C

INSURANCE REQUIREMENTS

The Agreement is conditioned upon the Consultant obtaining, maintaining and provided evidence of the following coverages and policies of insurance, which insurance coverages shall be maintained to and on behalf of the City, MVHA and Successor Agency in accordance with the requirements set forth herein.

Commercial General Liability/Umbrella. Primary insurance shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88 or equivalent form, as determined by Risk Management staff. Total limits shall be no less than **One Million Dollars (\$1,000,000)** per occurrence for all coverages and **One Million Dollars (\$1,000,000)** general aggregate. City of Mission Viejo, MVHA and Successor Agency and their elected and appointed officials, officers, employees, counsels, and agents shall be added as additional insureds using ISO additional insured endorsement form CG 20 10 11 85, or equivalent form, as determined by Risk Management staff (in no event will Mission Viejo accept an endorsement form with an edition date later than 1990). Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to Mission Viejo or any employee or agent of Mission Viejo. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured.

Umbrella Liability Insurance (if necessary to meet limits requirements) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum **\$25,000.00** self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion. Policies shall have concurrent starting and ending dates.

Business Auto/Umbrella Liability Insurance. Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than **One Million Dollars (\$1,000,000)** per accident. Starting and ending dates shall be concurrent. If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Workers' Compensation/Employer's Liability shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than **One Million Dollars (\$1,000,000)** per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respect to the City, MVHA and Successor Agency and their elected and appointed officials, officers, employees, counsels, and agents.

Professional Liability Insurance. Coverage shall be written on a policy form that provides professional liability insurance, errors and omissions or equivalent coverage appropriate to the Consultant's occupation or service. The policy limit shall be no less than **One Million Dollars (\$1,000,000.00)** per claim and in the aggregate.

[Exhibit C and Insurance requirements continued on next page]

Consultant and Mission Viejo further agree as a part of this Agreement and this EXHIBIT C specifically as follows:

1. This Exhibit C. supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit C.
2. Nothing contained in this Exhibit C. is to be construed as affecting or altering the legal status of any Party or all of the Parties to this Agreement. The insurance requirements set forth in this Exhibit C. are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.
3. All insurance coverage and limits provided pursuant to this agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the City, MVHA, and/or Successor Agency or their operations limits the application of such insurance coverage.
4. Requirements of specific coverage features or limits contained in this Exhibit C. are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. 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.
5. For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any Party hereto taking any steps that can be deemed to be in furtherance of or towards, performance of this Agreement.
6. All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement shall not prohibit Consultant, and Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City, MVHA and Successor Agency.
7. Unless otherwise approved by Mission Viejo, Consultant's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A:VII+." Self-insurance will not be considered to comply with these insurance specifications.
8. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, each of City, MVHA and Successor Agency has the right but not the duty to obtain the insurance it deems necessary and any premium paid by MVHA and/or Successor Agency will be immediately due and promptly reimbursed by Consultant.
9. Consultant agrees to provide evidence of the insurance required herein, satisfactory to MVHA and Successor Agency, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability and umbrella liability policies (if any) using ISO form CG 20 10 11 85 or equivalent form, as determined by Mission Viejo Risk Management staff. Consultant shall also provide a waiver of subrogation endorsement to Consultant's workers' compensation policy applicable each and all to City, MVHA and Successor Agency. Certificate(s) are to reflect that the insurer will provide thirty (30) calendar days' notice of any cancellation of coverage and all policies must be endorsed accordingly. Consultant agrees to 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. Consultant agrees to provide complete copies of policies to each and all to MVHA and Successor Agency upon request.

10. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
11. Consultant's insurance presented in compliance with these specifications shall not include self-insured retentions or deductibles unless declared each to City, MVHA and Successor Agency and approved by the Executive Director. City, MVHA and Successor Agency may require evidence of financial security if deductibles or self-insured are part of the Consultant's liability program.
12. Any actual or alleged failure on the part of City, MVHA and Successor Agency or any other additional insured under these requirements to obtain proof of insurance required under this Agreement or to inform Consultant of noncompliance with any insurance requirements in no way waives any right or remedy of City, MVHA and Successor Agency any additional insured, in this or any other regard.
13. Consultant agrees to require all subconsultants or other parties hired for the Services to be provided pursuant to this Agreement to provide general liability insurance naming as additional insureds all parties to this Agreement. Consultant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Consultant agrees to require that no contract used by any subconsultant or contracts Consultant enters into on behalf of City, MVHA and/or Successor Agency, will reserve the right to charge back to MVHA and/or Successor Agency, as applicable, the cost of insurance required by this Agreement. Consultant agrees that upon request all agreements with subconsultants or others with whom Consultant contracts with on behalf of MVHA and/or Successor Agency, as applicable, will be submitted to Mission Viejo Risk Management for review. Failure of MVHA and/or Successor Agency to request copies of such agreement will not impose any liability on City, MVHA and/or Successor Agency, or their elected and appointed officials, officers, employees, counsels, and agents.
14. If Consultant is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.
15. Consultant agrees to provide immediate notice to MVHA and Successor Agency of any claim or loss against Consultant that includes City, MVHA and/or Successor Agency as a defendant. MVHA and/or Successor Agency assume no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Mission Viejo.
16. It is agreed that insurance provided pursuant to these requirements will not be limited to coverage for the vicarious liability or supervisory role of any additional insured. All insurance coverage and limits provided are intended to apply to the full extent of the policies. Nothing contained in this agreement limits the application of such insurance coverage.

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