

**OVERSIGHT BOARD RESOLUTION NO. 114-16-OB**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE SUNNYVALE REDEVELOPMENT AGENCY APPROVING THE SUCCESSOR AGENCY CONTRACT WITH MACIAS GINI AND O'CONNELL, LLP, FOR SERVICES RELATED TO THE IMPLEMENTATION OF THE SUNNYVALE TOWN CENTER AMENDED DISPOSITION, DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT**

WHEREAS, the California state legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*); and

WHEREAS, pursuant to Health and Safety Code Section 34173, the City Council of the City of Sunnyvale (the "City Council") declared that the City of Sunnyvale (the "City"), would act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the City of Sunnyvale (the "Dissolved RDA") effective February 1, 2012; and

WHEREAS, pursuant to AB 1484 ("AB 1484"), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, the Dissolution Act provides for the appointment of an oversight board (the "Oversight Board") with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181; and

WHEREAS, upon dissolution of the Former RDA on February 1, 2012 and in accordance with the Dissolution Act, all of the Dissolved Agency's enforceable obligations became the obligations of the Successor Agency; and

WHEREAS, the Dissolved RDA was a party to the Amended Disposition, Development and Owner Participation Agreement ("ADDOPA") providing for the development of the Sunnyvale Town Center Project; and

WHEREAS, the ADDOPA is an enforceable obligation of the Successor Agency as that term is defined in Health and Safety Code Section 34171(d) and has been listed on each of the Successor Agency's approved Recognized Obligations Payment Schedules; and

WHEREAS, the terms of the ADDOPA require that the Successor Agency take certain actions and incur certain costs, including costs associated with the administration of the ADDOPA; and

WHEREAS, the Developer of the Sunnyvale Town Center Project requested Successor Agency approval of a transfer of the Project to a new development entity; and

WHEREAS, the ADDOPA requires that any assignee meet certain standards and requirements, as specified in the ADDOPA; and

WHEREAS, the Successor Agency hired the firm of Macias Gini and O'Connell, LLP to assist it in reviewing and evaluating the proposed assignment; and

WHEREAS, the costs for Macias Gini and O'Connell, LLP were included in ROPS line item 7 on ROPS 15-16B; and

WHEREAS, the services provided by Macias Gini and O'Connell, LLP are necessary to fulfil the Successor Agency's obligations under the ADDOPA as well as to ensure that the assignment of the Developer's interest in the ADDOPA protects the interest of the affected taxing entities in maximizing the property taxes from the Project.

NOW, THEREFORE, BE IT RESOLVED THAT THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE HEREBY FINDS, RESOLVES, AND DETERMINES THAT:

1. The foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

2. The Oversight Board hereby approves the contract between the Successor Agency and Macias Gini and O'Connell, LLP, shown on Exhibit A, attached hereto and incorporated by reference herein, in an amount not to exceed \$75,000 to be paid from RPTTF distributed to the Successor Agency pursuant to ROPS 15-16B for line item 7.

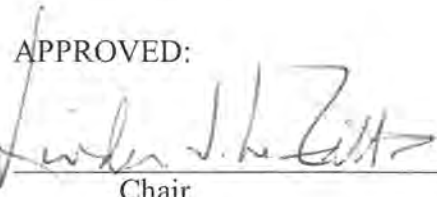
3. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

Adopted by the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Sunnyvale at a regular meeting held on January 28, 2016, by the following vote:

AYES: LEZOTTE, BILICH, QUINONEZ , TINSLEY, KIRBY, BRADLEY  
NOES: MORENO  
ABSTAIN: NONE  
ABSENT: NONE  
RECUSAL: NONE

ATTEST:

By   
\_\_\_\_\_  
Successor Agency Clerk  
[SEAL]

APPROVED:  
  
\_\_\_\_\_  
Chair

**EXHIBIT A**

**CONSULTANT SERVICES AGREEMENT BETWEEN  
THE SUNNYVALE SUCCESSOR AGENCY  
AND MACIAS, GINI & O'CONNELL, LLP  
FOR TECHNICAL FINANCIAL AND CONSULTING SERVICES  
FOR THE SUNNYVALE TOWNCENTER PROJECT**

THIS AGREEMENT dated August 3<sup>rd</sup>, 2015 is by and between the SUCCESSOR AGENCY OF THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF SUNNYVALE, ("SUCCESSOR AGENCY"), and MACIAS, GINI & O'CONNELL, LLP, a California limited liability partnership ("CONSULTANT").

WHEREAS, SUCCESSOR AGENCY is in need of specialized services in relation to Sunnyvale Town Center Project; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT:

**SECTION 1. SERVICES BY CONSULTANT.**

CONSULTANT shall perform those services specified in detail in Exhibit A, entitled "SCOPE OF SERVICES," which is attached hereto and incorporated herein.

**SECTION 2. TIME FOR PERFORMANCE.**

The term of this Agreement shall be from July 1, 2015 to June 30, 2017, unless otherwise terminated. CONSULTANT shall deliver the agreed upon services to SUCCESSOR AGENCY as specified in Exhibit A. Extensions of time may be granted by the Successor Agency Counsel upon a showing of good cause.

**SECTION 3. DUTIES OF SUCCESSOR AGENCY.**

SUCCESSOR AGENCY shall supply any documents or information available to SUCCESSOR AGENCY required by CONSULTANT for performance of its duties. Any materials provided shall be returned to SUCCESSOR AGENCY upon completion of the work.

**SECTION 4. COMPENSATION.**

The compensation to be paid to the CONSULTANT, including payment for professional services, shall not exceed SEVENTY-FIVE THOUSAND DOLLARS (\$75,000). The rate and schedule of payment is set out in Exhibit B, entitled "COMPENSATION," which is attached hereto and incorporated herein. CONSULTANT shall submit invoices to SUCCESSOR AGENCY to be paid in accordance with the procedures set forth in Exhibit B.

**SECTION 5. OWNERSHIP OF DOCUMENTS.**

SUCCESSOR AGENCY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the SUCCESSOR AGENCY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

**SECTION 6. CONFLICT OF INTEREST.**

- A. CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify SUCCESSOR AGENCY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of SUCCESSOR AGENCY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT's obligations under this Agreement.
- B. Pursuant to SUCCESSOR AGENCY's Standard Conflict of Interest Code, Council Policy 7.3.7, SUCCESSOR AGENCY has determined that any individual performing services under this Agreement is required to file a Statement of Economic Interest (Form 700), Disclosure Category 1. See [www.fppc.ca.gov](http://www.fppc.ca.gov) for Form 700.

**SECTION 7. CONFIDENTIAL INFORMATION.**

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of SUCCESSOR AGENCY of which CONSULTANT may become aware in the performance of its services.

**SECTION 8. COMPLIANCE WITH LAWS.**

- A. CONSULTANT shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the SUCCESSOR AGENCY.
- B. CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

**SECTION 9. INDEPENDENT CONTRACTOR.**

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of SUCCESSOR AGENCY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between SUCCESSOR AGENCY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

**SECTION 10. INDEMNITY.**

CONSULTANT shall indemnify and hold harmless SUCCESSOR AGENCY and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of SUCCESSOR AGENCY.

**SECTION 11. INSURANCE.**

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit C, entitled "INSURANCE," which is attached hereto and incorporated herein, and shall provide all certificates or endorsements as specified in Exhibit C.

**SECTION 12. SUCCESSOR AGENCY REPRESENTATIVE.**

Joan A. Borger, City Attorney and Deanna J. Santana, City Manager shall represent SUCCESSOR AGENCY in all matters pertaining to the services to be rendered under this Agreement. All requirements of SUCCESSOR AGENCY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the SUCCESSOR AGENCY representative.

**SECTION 13. CONSULTANT REPRESENTATIVE.**

Scott Johnson shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

**SECTION 14. NOTICES.**

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To SUCCESSOR AGENCY:  
Office of the City Attorney  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94088

To CONSULTANT:  
Macias, Gini & O'Connell, LLP  
Attn: Scott P. Johnson  
2121 N. California Blvd., Suite 750  
Walnut Creek, California 94596

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

**SECTION 15. ASSIGNMENT.**

This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the written consent of the SUCCESSOR AGENCY. Any attempt to assign or delegate this Agreement without the written consent of the SUCCESSOR AGENCY shall be void and of no force or effect. A consent by the SUCCESSOR AGENCY to one assignment shall not be deemed to be a consent to any subsequent assignment.

**SECTION 16. TERMINATION.**

- A. If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, SUCCESSOR AGENCY at its option may terminate this Agreement by giving written notice to CONSULTANT. If SUCCESSOR AGENCY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by SUCCESSOR AGENCY within thirty (30) after written notification of failure to pay.
- B. Without limitation to such rights or remedies as SUCCESSOR AGENCY shall otherwise have by law, SUCCESSOR AGENCY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from SUCCESSOR AGENCY to terminate. CONSULTANT shall present SUCCESSOR AGENCY with any work product completed at that point in time.

**SECTION 17. ENTIRE AGREEMENT; AMENDMENT.**

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

**SECTION 18. MISCELLANEOUS.**

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

"SUCCESSOR AGENCY"

"CONSULTANT"

SUCCESSOR AGENCY FOR THE CITY  
OF SUNNYVALE

MACIAS, GINI & O'CONNELL, LLP,  
a California limited liability partnership

Joan A. Borger  
Joan A. Borger  
Agency Counsel

By Arthur O'Connell  
Name  
Title Partner

Dated: 8/3/15

Dated: 7/30/15

By \_\_\_\_\_  
Name  
Title

Dated: \_\_\_\_\_



**EXHIBIT A  
SCOPE OF SERVICES**

When and as directed by SUCCESSOR AGENCY, CONSULTANT shall perform financial advisory services as follows:

**SCOPE 1: DUE DILIGENCE REQUIREMENTS AND PROCEDURES FOR POTENTIAL TRANSITION OF SUNNYVALE TOWNCENTER PROJECT FROM WELLS FARGO TO A NEW DEVELOPER: FINANCIAL ANALYSIS AND COMPLIANCE WITH ARTICLE 6 OF THE AMENDED DISPOSITION AND DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT (ADDOPA)**

Review, Assess and Document Developer's Compliance with Article 6

- A. Article 6 of the Amended Disposition and Development and Owner Participation Agreement (ADDOPA) for the Sunnyvale Towncenter Project requires the Successor Agency to consent, subject to certain criteria, to transfer of the Project to a new developer. Specifically, Article 6 provides in relevant part:

"ARTICLE 6.  
CHANGES IN DEVELOPER

6.01 Requirements for Transfer.

For the purposes of this Agreement, a "Transfer" means any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of fee title to the whole or any part of the Private Improvement Parcels or any assignment of this Agreement or the Related Documents (except as otherwise expressly provided by the Related Document). Transfer also includes any voluntary or involuntary sale, transfer, conveyance, assignment or other disposition of the ownership interests in Developer. Except as permitted pursuant to Section 6.03, the Developer shall not engage in a Transfer except as to the specifically permitted following Transfers:

(a) Any Transfer resulting from a foreclosure of a Security Financing Interest or deed in lieu of foreclosure.

(b) Any Transfer to a transferee that meets the following criteria as to the use(s) of the portion(s) of the Project proposed to be Transferred: (i) has the experience in and has completed major mixed-use commercial, retail, residential projects of similar size, scope and nature involving a mix of national, regional and local tenants, (ii) has adequate financial capacity, including the references of at least two lending institutions with substantial lending experience in California mixed use real estate, to timely commence and complete the

construction thereof, (iii) possesses a good business character and reputation, and (iv) has prior development projects and an operating presence in California. Developer shall provide reasonable evidence to the Agency demonstrating the proposed transferee's satisfaction of the foregoing criteria. The Agency shall acknowledge or challenge the proposed transferee's satisfaction of the foregoing criteria within 20 business days after Developer's submittal. During such 20-day review period, Developer and Agency shall respond to inquiries of the other and exchange information as may be requested. If Agency, exercising commercially reasonable discretion, advises Developer that the proposed transferee does not satisfy any of the stated criteria, the Agency shall provide detailed evidence of the same. If Agency fails to respond to Developer's submittal within the 20-day period, the Transfer shall be deemed permitted. Developer shall respond to Agency's evidence of the proposed transferee's failure to satisfy the criteria within 10 days after receipt of same. If, following submission of Developer's response, the Agency continues to dispute the transferee's satisfaction of the stated criteria and so notifies Developer within 5 days after receipt of Developer's response, such dispute shall be resolved by expedited arbitration.

[c-f omitted.]”

- B. CONSULTANT will assess whether the proposed transferee meets the four criteria listed in Article 6, above, and shall prepare written documentation of the analysis and basis for conclusions.
- C. CONSULTANT shall provide a written report of CONSULTANT's analyses and observations and work with SUCCESSOR AGENCY staff so that staff has the information to make its recommendation to the City Council, and CONSULTANT shall be available to attend City Council meetings to present the financial analysis and related methodology.
- D. CONSULTANT shall assist SUCCESSOR AGENCY if necessary with any inquiries made pursuant to ADDOPA Article 6(b), and with resultant arbitration, if any. Such inquiries related to arbitration would result in an addition to the scope. This additional scope shall be mutually agreed upon at Consultant's discounted hourly rates as indicated in Exhibit B per classification of Consultant's team members, plus any out-of pocket travel expenses, at standard IRS mileage rates.
- E. CONSULTANT shall provide SUCCESSOR AGENCY with a detailed plan describing the methodology it will use to conduct the financial assessment.

**EXHIBIT B  
COMPENSATION**

<b>Scope 1: Due Diligence and Financial Analysis and Compliance with ARTICLE 6 - Developer Change Review &amp; Financial Assessment (Per Proposed Developer) *</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
<b>1. Review Transfer Requirements</b>			
Partner	15	\$300	\$4,500
Senior Manager	10	\$220	\$2,200
Manager	10	\$180	\$1,800
<b>Total</b>	<b>20</b>		<b>\$8,500</b>
<b>2. Financial Conditions Assessment</b>			
Partner	8	\$300	\$2,400
Senior Manager	12	\$220	\$2,640
Manager	16	\$180	\$2,880
<b>Total</b>	<b>36</b>		<b>\$7,920</b>
<b>3. Report Preparation and Meeting Presentation</b>			
Partner	4	\$300	\$1,200
Senior Manager	10	\$220	\$2,200
Manager	16	\$180	\$2,880
<b>Total</b>	<b>30</b>		<b>\$6,280</b>
<b>Grand Total</b>	<b>86</b>		<b>\$22,700</b>
<b>Not to Exceed Total (based on 3 reviews)</b>	<b>258</b>		<b>\$68,100</b>
<b>Not to Exceed Total Contract Amount*</b>			<b>\$75,000</b>
*The total contract amount may not exceed \$75,000			

\* Consultant's hours per task are estimated. The mix of hours may be greater or less for each individual Consultant team member and for each Task (1-3). However, the total amount of fees, per developer, for Scope 1 will not exceed \$22,700 per proposed developer review.

## EXHIBIT C INSURANCE

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 work by the CONSULTANT, his agents, representatives, or employees.

### Minimum Scope and Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. **Commercial General Liability**: \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.
4. **Errors and Omissions** Liability Insurance appropriate to the CONSULTANT's Profession: \$1,000,000 per occurrence.

### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

### Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The SUCCESOR AGENCY and/ or the City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.

2. For any claims related to this project, the CONSULTANT's insurance shall be primary. Any insurance or self-insurance maintained by the SUCCESSOR AGENCY and/or the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the SUCCESSOR AGENCY and/or the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the SUCCESSOR AGENCY and/or the City of Sunnyvale.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the SUCCESSOR AGENCY and/or the City of Sunnyvale.

#### Verification of Coverage

CONSULTANT shall furnish the SUCCESSOR AGENCY and/or the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.