



Office of the City Manager

CONSENT CALENDAR

April 1, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Zach Cowan, City Attorney

Subject: Contract: Lawyers for America Program

RECOMMENDATION

Adopt two Resolutions:

1. Authorizing the City Manager to enter into a Memorandum of Agreement with the Lawyers for America program.
2. Authorizing the City Manager to enter into a Field Agency Agreement with Hastings College of the Law.

FISCAL IMPACTS OF RECOMMENDATION

The cost of this program is not to exceed \$81,000, consisting of \$80,000 program costs payable in installments to the Lawyers for America program and up to \$1,000 in State Bar fees, to be paid during FY 2015 and 2016. Funds are available in the City Attorney's budget from budget code 881-1702-410-3021 and will be paid from that budget code or such other budget code as may be specified in the FY 2015 and FY 2016 budgets. CMS No. BM3LR.

CURRENT SITUATION AND ITS EFFECTS

The City Attorney's office consists of eight attorneys, 0.5 FTE paralegal, and three support staff, and is responsible for all of the City's legal work and obligations. While the office keeps up with its work, there are always extra services and resources staff would like to provide however simply do not have time to provide. In addition, the office anticipates a number of vacancies over the next three years, and will benefit from the presence of additional trained attorneys during that period.

BACKGROUND

In November the City Attorney was contacted by the "Lawyers for America" ("LfA") program at U.C. Hastings College of the Law about participating in the program beginning August 2014. LfA's mission is to improve the practical skills of new lawyers, to expand the availability of legal services for those who cannot afford lawyers, and to increase the ability of government and nonprofit legal offices to provide legal services.

LfA is a two year fellowship that replaces the traditional third year of law school classes with a placement in government or non-profit positions, during their third year of law school and their first year after graduation and the bar exam. Under the agreement with

LfA, participating agencies pay LfA \$40,000 per fellow in four installments. Each fellow receives \$30,000 and LfA retains \$10,000 per fellow for its expenses. The agreement with LfA also requires the City to pay the fellows' State Bar dues during the second year of the fellowship, after they take the bar exam.

The City Attorney determined that participation in LfA would be beneficial for the City, as it provides an economical method to provide additional legal services, will not result in the displacement of any career employees, and the City's commitment is limited to the two year fellowship period.

The City Attorney considered a number of applicants and ultimately selected two LfA fellows, to begin in August of 2014. Job duties for those fellows have been established and mentors in the City Attorney's office have been selected. While they will be exposed to a wide variety of municipal issues, areas of particular focus will be providing additional support to the Health Housing and Community Services Department, enforcement of the Berkeley Election Reform Act and the Open Government Ordinance, code enforcement, and economic development.

Participation in the LfA program requires the City to enter into two agreements:

- An agreement with the LfA program itself, which generally describes the program and the parties' rights and obligations, and requires the payment of funds; and
- A "field agency" agreement with Hastings College of the Law that articulates the City's and Hastings' respective rights and obligations with respect to the LfA program. No funds are paid to Hastings.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The LfA program represents a very economical way to obtain added capacity to the City Attorney's office, without constituting a long-term commitment to a career position. In addition, the City Attorney's office supports the recruitment of capable and motivated law school graduates to public service.

ALTERNATIVE ACTIONS CONSIDERED

There are no fiscally viable alternatives for obtaining a comparable level additional attorney support.

CONTACT PERSON

Zach Cowan, City Attorney, 510-981-6998

Attachments:

- 1: Resolution - Memorandum of Agreement With Lawyers For America Program
- 2: Resolution - Field Agency Agreement With Hastings College of the Law

RESOLUTION NO. ##,###-N.S.

MEMORANDUM OF AGREEMENT: LAWYERS FOR AMERICA PROGRAM

WHEREAS, the Lawyers for America program provides law students with training to enter public service, at low cost to participating public agencies; and

WHEREAS, the Lawyers for America program is currently working with Hastings College of the Law to place its students in 2-year fellowships with public agencies; and

WHEREAS, participation in the Lawyers for America program can provide the City with substantial additional resources for the City Attorney's office at very low cost; and

WHEREAS, the City Attorneys' office has selected two highly qualified candidates as Lawyers for America fellows for FY 2015 and 2016; and

WHEREAS, funds are available in the City Attorney's budget from budget code 881-1702-410-3021 and will be paid from that budget code or such other budget code as may be specified in the FY 2015 and FY 2016 budgets. CMS No. BM3LR.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to enter into one or more Memoranda of Agreement with the Lawyers for America program for a total amount not to exceed \$80,000, in substantially the form attached hereto.

Exhibit

A: Memorandum of Agreement for the Lawyers for America program

**MEMORANDUM OF AGREEMENT
FOR THE LAWYERS FOR AMERICA PROGRAM**

I. PURPOSE

This Memorandum of Agreement (“Agreement”) among:

1. The undersigned Fellow;
2. University of California, Hastings College of the Law;
3. City of Berkeley City Attorney’s Office and
4. Lawyers for America

describes the rights and responsibilities of each with respect to implementing the Lawyers for America Fellowship program.

II. BACKGROUND

The mission of the Lawyers for America Fellowship Program is to improve the lawyering skills of new lawyers while expanding the availability of legal services for those who cannot afford to hire lawyers and for the public by providing two-year work experiences in the public and nonprofit sectors.

The mission is accomplished through the cooperation of colleges, participating government agencies and legal nonprofits, and law students interested in devoting most of their third year of legal education to clinical experience and committed to returning for a year’s additional paid service to their clinical agency site thereafter.

III. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

- A. “Agency” shall mean the City of Berkeley City Attorney’s Office.
- B. “Agency Supervisor” shall mean a designated representative from the City of Berkeley City Attorney’s Office assigned to supervise the Program and its Fellows.
- C. “Bar Exam” shall mean the California State Bar exam.
- D. “College” shall mean the University of California, Hastings College of the Law.
- E. “Externship” shall mean the one (1) academic year of clinical work by a Fellow at the Agency during his or her third year at the College.
- F. “Fellow” shall mean a participant in the Program.

- G. "Fellowship" shall mean the one (1) paid year by a Fellow at the Agency that follows both the Externship year and the Bar Exam.
- H. "Program" shall mean the Lawyers for America Fellowship Program, which is a two-year program comprised of the Externship year and the Fellowship year.
- I. "Student" shall mean a student at the University of California, Hastings College of the Law and prospective participants in the Program.

IV. COLLEGE'S OBLIGATIONS

- A. The College will designate a faculty member for each Agency to supervise the activities of the Fellows during their Externship.
- B. The College, through the supervising faculty member or other staff or faculty, will provide adequate counseling to Students interested in the Program. Such counseling will include determining a course of study for the Students' second year at the College that will prepare them for:
 - 1. A third year comprised primarily of an externship through the Program; and
 - 2. Taking the Bar Exam.
- C. During the Fellow's Externship, the College will provide the Fellow with:
 - 1. Adequate faculty supervision and resources, including an academically-sound classroom component that meets American Bar Association requirements and provides Lawyers for America Fellows with substantive knowledge that complements their Externship.
 - a. The classroom component may include reading, reflection, and writing assignments, at the discretion of the designated faculty supervisor.
 - b. The classroom component (4 units per semester) will be graded and the Externship component (8 units per semester) will be pass/fail.
 - c. The faculty supervisor will ensure adequate and appropriate feedback about all aspects of the Fellow's work, including arranging for feedback from the Agency supervisors.
 - d. The College will require the faculty supervisor to maintain communication with Agency supervisors to ensure the quality and integrity of the overall Fellow experience.

2. Supervised opportunity for adequate consideration of ethics and public policy.
 3. Supervised opportunity for guided reflection on the lawyering experience.
- D. The College will be responsible for enforcement of its student code of conduct policies, including ethical responsibilities, throughout the term of the Externship.
- E. After the Fellow's graduation, the College will have no continuing responsibility with respect to that Fellow during the Fellowship year of the Program.

V. AGENCY'S OBLIGATIONS

- A. The Agency will provide adequate supervision that complies with the provisions of this Agreement and the Field Agency Agreement between the Agency and the College, throughout the course of each Fellow's experience.
- B. The Agency will ensure an appropriate academic experience for Fellows during their Externship year by providing feedback directly to the student Fellows and to the faculty supervisor about the Fellows, and by meeting the obligations agreed upon in the Field Agency Agreement between the College and the Agency.
- C. During the Externship year, the Agency will cooperate with the College and the faculty supervisor in determining the types of experiences appropriate for the Fellows. The Agency will supervise workloads so that (except when an extraordinary emergency arises) Fellows are able to participate fully in the requirements of the classroom component and in any other courses or extracurricular activities which the Agency supervisor has approved.
- D. During the Fellowship year, the Agency will continue to provide each Fellow with sufficient training and feedback about his or her work to enable development of lawyering skills.
- E. For each Fellow, the Agency will pay a total of Forty Thousand Dollars (\$40,000) to the Lawyers for America Program, by way of four equal installments payable on August 15, 2014, February 15, 2015, August 15, 2015 and February 15, 2016.
- F. The Agency will ensure that each Fellow, until he or she becomes a member of the California Bar, is receiving supervision in accordance with standards of the American Bar Association and the State Bar of California. That supervision will cover the Fellow's substantive legal work as well as ethical practice obligations.

G. The Agency will defend and indemnify Fellows from any and all claims, damages or fees (including legal fees which will be paid as incurred) with respect to any work performed or undertaken by a Fellow or other actions or inactions by a Fellow while the Fellow is performing work for or is under the direction or supervision of the Agency during the Externship or Fellowship to the same extent and manner the Agency provides such defense and indemnity with respect to its staff attorneys, including with respect to insurance coverage for malpractice claims. The Agency agrees to pay the Fellow's bar dues upon passage of the California Bar.

H. With respect to illness or other circumstances involving absences from work:

1. During the Externship year, Fellows will be treated as if they are regular student externs at the Agency.

During the Externship year, in cases necessitating significant absence, the Agency and the Fellow will make arrangements for a period of "make-up" time to ensure that the requirement of thirty-two (32) hours of work each week during the Externship year is met.

2. During the Fellowship year, a Fellow will be provided vacation and sick leave as follows. One week of vacation leave will be provided after the Fellow has completed six months of service with Agency in the Fellowship year. After the Fellow has completed six months, the Fellow will accrue vacation leave of 3.07 hours per two-week period. The Fellow will accrue one day of sick leave per month of service during the Fellowship year.

Under no circumstances will a Fellow be entitled to any payment for unused vacation or sick leave at the conclusion of the Fellowship year.

During the Fellowship year, should illness or other circumstance necessitate significant absence (beyond what would be provided as paid sick leave at the Agency), the Fellow will continue to serve at the Agency beyond the original Fellowship end date to make up for that excess absence, unless the Agency determines that the Fellowship should terminate at the previously-determined date without the make-up period. During the excessive absence period, the Fellow will not receive the Fellowship stipend which would, however, continue during any make-up period. If the Fellowship terminates without a make-up period, LFA will refund to the Agency all amounts not used for Fellow payment because of the excessive absence.

- I. The Agency will collaborate with the College's Associate Dean for Experiential Learning or her designee(s) regarding development and subsequent modification of the Program's application process.

- J. As soon as practicable after receiving applications reviewed and approved by the College's designated committee, the Agency will review the applications, arrange any desired interviews, and extend offers. A waitlist may be created, at the option of the Agency, should a Fellow change his or her mind or become ineligible by the beginning of the third year of College. The Agency will select Fellows in full compliance with all legal obligations concerning equal employment opportunity.
- K. While the Fellow is working at the Agency, the Agency will be responsible for compliance with all applicable requirements of local, state, and/or federal law pertaining to employment-related matters, other than those involving proper payment (wage and hours claims). Nothing in this Agreement shall be construed to confer on the Fellow any of the rights and benefits the Agency provides to its regular career attorneys.

VI. LAWYERS FOR AMERICA'S OBLIGATIONS

- A. Lawyers for America will, to the extent practicable and legally permissible, provide support to the College and the Agency including, but not limited to, acting as a clearinghouse for contracts, curriculum, and other matters that will make the Program run more effectively.
- B. Lawyers for America, as the employer of the Fellows during the Fellowship year, will utilize the money provided by the Agency for Fellows in accordance with its contractual obligations. During the Fellowship year, Lawyers for America will pay each Fellow a total stipend of \$30,000 (paid biweekly, subject to any applicable federal, state, local, or foreign withholdings), will pay all required employment taxes, and will arrange for basic health insurance in such amount and coverage as Lawyers for America in its discretion may decide, and will maintain any required workers' compensation coverage. Lawyers for America will certify the full-time employment of the Fellows during the Fellowship year, as needed.
- C. Lawyers for America will engage in no activity in conflict with its nonprofit/tax-exempt status.
- D. Lawyers for America will, by May 15, 2014, obtain, and continuously thereafter maintain in force, liability insurance with a one million dollar (\$1,000,000) minimum policy limit.
- E. Lawyers for America agree to comply with the following:
 - i. Nuclear Free Berkeley Act, B.M.C. Chapter 12.90, as amended from time to time.
 - ii. a. Oppressive States Contracting Prohibition. In accordance with Resolution No. 59,853- N.S., Lawyers for America certifies that it has no

contractual relations with and agrees during the term of this agreement to forego contractual relations to provide personal services to the following entities:

- (1) The governing regime in any Oppressive State.
 - (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
 - (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- b. For purposes of this Contract, the Tibet Autonomous Region and the provinces of Aho, Kham, and U-Tsang shall be deemed Oppressive States.

VII. FELLOW'S OBLIGATIONS

- A. Fellows will, to the best of their abilities, meet the substantive work requirements of the College and the Agency. Fellows will conduct themselves at all times as professionals and in accordance with the obligations of ethical practice, including, but not limited to, maintaining client confidentiality and disclosing and refraining from any conflicts of interest. Fellows will be required to sign a separate confidentiality agreement with the Agency.
- B. During the Externship year, Fellows must obtain approval of the course schedule for each semester from both the faculty supervisor at the College and the Agency Supervisor. In addition, the Fellow will notify the Agency Supervisor about any College extracurricular activities that might impact his or her work schedule, discuss any potential conflicts, and reach agreement with the Agency Supervisor about ways to mitigate any difficulties that might arise.
- C. Fellows are expected to be punctual and have good attendance. Punctuality and consistent attendance are requirements and essential functions of the position. If a Fellow's absence can be anticipated, or if a Fellow is unexpectedly delayed or unable to report to work for any reason, he or she must promptly and appropriately notify the Agency Supervisor and the faculty supervisor.
- D. The Externship year will end on the Friday in May 2015 preceding the week ending with the College's graduation. Fellows will take the California bar examination immediately following graduation from College and will be given a leave of absence from the Agency to study for the bar examination. The Fellowship year will begin no sooner than two weeks following the Bar Exam

or at a time thereafter as may be requested by the Agency, but no later than September 1, 2015.

VIII. DISPUTES

A. The dispute resolution process **for disputes between the Program, College and Agency** will be as follows:

Step 1: Informal meeting. In the event of any dispute arising from or related to this Agreement, the relationships among the parties, or the Program generally, including but not limited to claims for breach of contract, non-performance, and bad faith, the aggrieved party will serve written notice upon the other parties regarding the existence of a Dispute and request that they meet to attempt to resolve the Dispute informally. .

Step 2: Mediation. If the parties are unable to resolve the Dispute informally, the parties agree that it can be very productive to engage the services of a professional, trained mediator whose role is to facilitate a mutually satisfactory resolution of the Dispute. Accordingly, the parties agree to mediate a Dispute that cannot be informally resolved. The parties will select a mutually agreed mediator and the mediation will be conducted confidentially in accordance with mutually agreed upon procedures. Statements during mediation will be considered statements during settlement negotiations and will not be discoverable or admissible in any subsequent proceedings.

The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in Alameda County, California. The parties agree to submit any disputes arising out of or relating to this Agreement to non-binding mediation as specified in Step 2 prior to filing a court action.

B. The following shall be the sole dispute resolution process for all disputes between the Agency and the Fellow:

In the event of any dispute arising from or related to this Agreement, including but not limited to claims for breach of contract, non-performance, bad faith, torts, unpaid wages, labor law violations, wrongful termination, and/or discrimination (including harassment) based upon any federal, state or local ordinance, statute, regulation, constitutional provisions or common law (a "Dispute"), the Fellow will serve written notice upon the Agency regarding the existence of a Dispute and request that they meet to attempt to resolve the Dispute informally.

In the event the Agency intends to terminate the Fellow for cause, it will first notify LfA and the College and discuss its reasons for doing so. The Agency will then advise the Fellow of the reasons for the termination and give the Fellow an

opportunity to meet with the Agency Supervisor/City Attorney) to present his/her response to the termination. The Agency Supervisor/City Attorney's decision will be final and no further right of appeal will be provided.

Notwithstanding anything to the contrary, nothing in this provision restricts the right of the Fellow to file administrative claims with any government agency.

IX. TERMINATION

A. The College, the Agency, and Lawyers for America may terminate this agreement immediately for Cause by giving at least ten (10) days' notice in writing to the other parties. For purposes of this section, "Cause" means: (i) a Fellow's conviction of or plea of *nolo contendere* to a felony or a misdemeanor involving moral turpitude; (ii) a Fellow's engaging in an act of gross negligence or willful misconduct in the performance of his or her obligations and duties; (iii) a Fellow's commission of an act of fraud against, or material misconduct or willful misappropriation of property belonging to, the College, Agency and/or Lawyers for America; (iv) a Fellow engaging in any other misconduct that has had or will have an adverse effect on the College, Agency and/or Lawyers for America's clients, reputations or businesses; (v) a Fellow's material violation of applicable codes of conduct of the College, the Agency, or the State Bar of California; or (vi) a Fellow's performance during the Fellowship year that does not meet minimum standards of professional competence as defined by the California Rules of Professional Conduct and / or case law. In the event the Agency terminates the Fellow for Cause, the Agency may immediately place the Fellow on paid administrative leave in lieu of the ten days' notice.

B. The College, the Agency, and Lawyers for American may terminate this agreement without Cause by giving at least ninety (90) days' notice in writing to the other parties. However, a termination without Cause is subject to the following provisos:

1. If termination would interfere with either semester of the Externship year of any Fellow, this Agreement may not terminate until the end of that semester unless the Fellow is assured the promised, or an equivalent, experience to avoid harm to his or her academic advancement or remains able to register for other classes at the College. The College, through the Associate Dean for Experiential Learning, will assist the Agency in finding an equivalent experience.

If notice of termination occurs after November 15 of the Externship year, the Fellow will be paid by Lawyers for America from payments it has received from the Agency the sum of \$10,000, less any required withholdings, by Lawyers for America as anticipated post-Bar Fellowship earnings, unless a substitute Fellowship is arranged.

2. If termination would interfere with the Fellowship year, this Agreement may not terminate until the end of that year unless the Fellow is assured the promised, or an alternative, work experience as an entry level attorney to avoid financial hardship and harm to his or her professional advancement, or the Fellow is paid the remainder of the \$30,000 stipend, less any required withholdings anticipated for the year. All the parties will cooperate in seeking to provide such alternative experiences for Fellows in case of termination.
- C. The Fellow may, prior to the beginning of the Externship, terminate this Agreement for any reason, by giving at least sixty (60) days' notice in writing to the College, the Agency, and Lawyers for America. The Fellow must provide notice in order to enable another Student to join the Program.
 - D. During the course of the Externship, if the Fellow needs to terminate the Externship for illness or similar reasons, the College will determine credit eligibility under the Academic Regulations of the College.
 - E. If the Fellow wishes to terminate the Externship for a reason related to problems connected to the Agency that are deemed by the College to be for reasonable cause, decisions concerning credit eligibility will be determined under the Academic Regulations of the College.
 - F. If the Fellow fails to return to the Agency for the Fellowship year, or leaves service with the Agency prior to the end of the Fellowship year, without just cause in breach of this Agreement,
 1. The Fellow will pay the amount of \$10,000 to Lawyers for America in recognition of expenditures made on behalf of that Fellow; the benefits received from participation in the program, including supervision and training provided throughout the first Program year by the College and the Agency; the value of selection as a Fellow to employability; and the cost to the Agency of losing a trained post-bar employee.
 2. The payment by the Fellow will be credited by Lawyers for America to the fees owed by the Fellow's Agency for a subsequent Fellow or, if the Agency is no longer participating in the program, repaid to the Agency. In addition, Lawyers for America will credit or repay the Agency for any amounts paid to Lawyers for America for the Fellow in breach beyond that already expended by Lawyers for America.
 - G. If the Fellow does not pass the first Bar Exam following graduation, the Fellow must retake the exam at the next sitting. The Agency will grant the Fellow an appropriate unpaid leave of absence to allow for bar study. If the Fellow passes the Bar Exam on the second attempt, the Fellowship year will

be extended for a duration equivalent to the duration of the leave of absence granted for subsequent bar study. If the Fellow does not pass the second Bar Exam, the fellowship shall terminate no later than May 31, 2016. If the Fellow serves for less than a full year, Lawyers for America will repay the Agency for those amounts paid to Lawyers for America for the Fellow that will not be expended for payment to or on behalf of that Fellow. If the Agency terminates the Fellow under this paragraph, such termination shall not be subject to the provisions in Section IX , paragraphs B, B.1 and B.2 of this Agreement.

X. INDEMNIFICATION

- A. Agency shall defend, indemnify, and hold College, LFA, and the Fellows, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of Agency, its officers, employees, or agents.
- B. College shall defend, indemnify, and hold Agency, LFA, and the Fellows, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of College, its officers, employees, or agents.
- C. Lawyers for America shall defend, indemnify, and hold Agency, College, and the Fellows, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of Lawyers for America, its officers, employees, or agents.
- D. Fellow shall defend, indemnify, and hold Agency, College, and LFA, and their officers, employees, and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this contract, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omission of the Fellow.
- E. Agency, College, and Lawyers for America shall maintain adequate liability insurance or its equivalent to meet its obligations under this section.

XI. GENERAL PROVISIONS

- A. Mutual Representations. Each party represents to the others that it: (i) has full right, power and authority to enter into this Agreement and carry out its responsibilities hereunder; (ii) will comply with all applicable laws and regulations; and (iii) will not make any representations on behalf of the others or enter into any agreements on behalf of the others without the prior written consent of the relevant other parties.
- B. Notices. Notices or communications required or permitted to be given under this Agreement will be given as of the date of mailing to the respective parties by certified or registered mail, return receipt requested, at the addresses set forth on the signature page. Any party may change its address by providing written notice to the others of such change.
- C. Surviving Provisions. Notwithstanding the expiration or early termination of this Agreement, the provisions regarding termination, indemnification and these general provisions will each survive in accordance with their terms.
- D. No Assignment. No party may, directly or indirectly, in whole or in part, by operation of law or otherwise, assign or transfer this Agreement or delegate any of its obligations under this Agreement without the other parties' prior written consent. Any attempted assignment, transfer or delegation without such written consent will be void.
- E. Governing Law. This Agreement is made under and will be construed in accordance with the laws of California, U.S., without reference to conflict of laws principles.
- F. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect, and the parties will negotiate in good faith a substitute, valid and enforceable provision that most nearly effects the parties' intent in entering into this Agreement.
- G. Headings. The captions and headings used in this Agreement are for convenience in reference only, and are not to be construed in any way as terms or be used to interpret the provisions of this Agreement.
- H. Waiver of Breach. A party's failure to exercise any of its rights hereunder will not constitute or be deemed a waiver or forfeiture of any such rights.
- I. Entire Agreement. This Agreement and Field Agency Agreement (as it applies to the College and Agency) represent the entire agreement and understanding between the parties concerning the subject matter of this Agreement, and supersede and replace any and all prior agreements and

understandings between the parties concerning the subject matter of this Agreement and the Field Agency Agreement. This Agreement may not be modified or amended except by a written agreement signed by each party whose rights or obligations are being modified or amended.

J. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

For the University of California
Hastings College of the Law

For the City of Berkeley
City Attorney's Office

David Seward
Chief Financial Officer

Christine Daniel
City Manager

Address: _____

Address: _____

Approved as to Form

Approved as to Form

Elise Traynum
General Counsel

Zach Cowan
City Attorney

Address: _____

Address: _____

Lawyers for America

For Fellow

By:

By:

Title:

Title:

Address:

Address:

RESOLUTION NO. ##,###-N.S.

FIELD AGENCY AGREEMENT: HASTINGS COLLEGE OF THE LAW FOR LAWYERS
FOR AMERICA PROGRAM

WHEREAS, the Lawyers for America program provides law students with training to enter public service, at low cost to participating public agencies; and

WHEREAS, the Lawyers for America program is currently working with Hastings College of the Law to place its students in 2-year fellowships with public agencies; and

WHEREAS, participation in the Lawyers for America program can provide the City with substantial additional resources for the City Attorney's office at very low cost; and

WHEREAS, the City Attorneys' office has selected two highly qualified candidates as Lawyers for America fellows for FY 2015 and 2016.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to enter into a Field Agency Agreement with Hastings College of the Law, which does not involve any expenditure, in substantially the form attached hereto.

Exhibit

A: Field Agency Agreement

**LAWYERS FOR AMERICA PROGRAM
HASTINGS COLLEGE OF THE LAW**

FIELD AGENCY AGREEMENT

I. PURPOSE

The primary purpose of this Agreement is to further the educational objectives of the Lawyers for America Program by placing two (2) clinical Fellows with the Agency to work under the direction of a designated attorney supervisor and other Agency attorneys to provide advice and litigation representation on municipal law issues to all city departments.

II. PARTIES

This agreement is between UC Hastings College of the Law (the College) and the City of Berkeley City Attorney's Office (Agency).

III. PROGRAM DESCRIPTION AND OBJECTIVES

The Lawyers for America program is a two-year program which aims to improve the lawyering skills of new lawyers while expanding the availability of legal services for those who cannot afford to hire lawyers and for the public by providing two-year work experiences in the public and nonprofit sectors.

Those Fellows selected for the Program participate during their third year at the College and first year post-bar examination. During the first year of the Program, the selected Fellows complete an Externship at participating nonprofit and governmental agencies. During the second year of the program, after graduation and leave to study for and take the bar examination, the Fellows return to the same agency for a paid Fellowship. This Field Agency Agreement between the College and the Agency concerns solely the first year of the program, during which the Fellow is a third-year law Fellow.

Both the classroom and fieldwork components of the Lawyers for America Program are intended to serve the following educational objectives:

1. To train Fellows in certain basic civil advice and litigation skills on various municipal law matters;
2. To teach Fellows how to reflect on their lawyering experiences so that they can become self-teachers;
3. To assist Fellows in becoming ethical lawyers by teaching them to recognize and resolve ethical problems that arise in practice; and
4. To assist Fellows with developing an independent, objective perspective on legal institutions and their functioning and to enable critical thinking on matters of public policy with respect to legal institutions.

IV. DEFINITIONS

For purposes of this Agreement, the following definitions will apply:

- A. "Agency" will mean the City of Berkeley City Attorney's Office.
- B. "Agency Supervisor" will mean a designated representative from the City of Berkeley City Attorney's Office assigned to supervise Fellows placed at the Agency through the Lawyers for America Fellowship Program.
- C. "College" will mean the University of California, Hastings College of the Law.
- D. "Externship" will mean the one (1) academic year of clinical work by a Fellow at the Agency during his or her third year at the College.
- E. "Faculty Supervisor" will mean the designated representative from the College assigned to supervise the Lawyers for America Fellowship Program and its Fellows.
- F. "Fellow" will mean a participant in the Lawyers for America Fellowship program.
- G. "Fellowship" will mean a Fellow's one (1) year of paid work at the Agency that follows both the Externship year and the bar examination.
- H. "Program" will mean the Lawyers for America Fellowship Program, which is a two-year program comprised of the Externship year and the Fellowship year.
- I. "Student" will mean a student at the University of California, Hastings College of the Law and prospective participants in the Program.

V. AGENCY'S OBLIGATIONS

A. FELLOW WORK ASSIGNMENTS

1. With the Agency's assistance, the Fellow will obtain certification to practice under the State Bar of California's Rules Governing the Practical Training of Law Students. The Agency will provide an appropriate orientation for the Fellow at the beginning of the placement; the schedule and topics will be coordinated with the Faculty Supervisor to avoid duplication and assure adequacy of coverage. After initial orientation, the Agency will assign the Fellow a variety of legal work for which the Fellow will be substantially responsible. That legal work will include supporting Agency lawyers by researching and writing memoranda, ordinances, and motions, on various municipal law

matters, and by assisting with other legal tasks related to providing advice to the Agency's departments.

2. The Agency Supervisor will communicate with the Faculty Supervisor regarding the type of assignments on which the Fellow is working, so that the Faculty Supervisor may coordinate appropriate classroom work to maximize the educational value of the Program to the Fellow.
3. To the extent possible, consistent with the Fellow's abilities and experience, the Fellow will be assigned challenging and varied tasks of progressively-increasing complexity with the goal of the Fellow being prepared to handle, upon the Fellow's return to the Agency following the Bar Exam and subsequent admission to the California Bar, legal work of the same type as is normally done by entry-level lawyers at the Agency in the Deputy City Attorney I job classification.

B. SUPERVISION

1. All work performed by the Fellow on behalf of the Agency will be carefully supervised by attorneys employed by the Agency.
2. Primary responsibility for casework supervision will rest with the Agency Supervisor, who will be selected by the Agency at the beginning of the year and approved by the College. This supervisor will work in conjunction with other attorneys at the Agency to provide day to day supervision of the Fellow and will serve as the single point of contact for the LfA Faculty Supervisor.
3. Additional supervision may be provided by other Agency attorneys.
4. The supervisors will assist the Fellow in handling his or her work load and will provide meaningful (frequent, specific, timely, and detailed) feedback to the Fellow on individual assignments.
5. The Agency will assist the Fellow in scheduling fieldwork hours, and will set up a system to ensure that the Fellow spends a minimum of 32 hours per week working at the Agency.
6. The Agency will defend and indemnify the Fellow from any and all claims, damage or fees (including legal fees which will be paid as incurred) with respect to any work performed or undertaken by the Fellow or other actions or inactions by Fellow, while Fellow is performing work for or is under the direction or supervision of the Agency during the Externship to the same extent and manner the Agency provides with respect to its staff attorneys, including with respect to insurance coverage for malpractice claims.

C. ORIENTATION AND PARTICIPATION IN CLASSROOM COMPONENT

1. During the first week of fieldwork, the Agency will provide orientation and training on the substantive law, local rules and practices, and office systems and procedures that the Fellow should be familiar with when working for the Agency. The Agency will provide a dedicated workspace and computer terminal for each Fellow.
2. The Agency Supervisor, or another representative of the Agency as agreed by the Agency and the College, will reasonably participate in the classroom component of the program when requested to do so by the faculty member responsible for the course. Such requests will be made sufficiently in advance to accommodate the supervisor's schedule.

D. COMPLIANCE WITH COURSE REQUIREMENTS AND FELLOW PRACTICE RULES

1. The Agency will establish systems of supervision and quality control designed to ensure compliance with the State Bar of California's Rules Governing the Practical Training of Law Students and the California Rules of Professional Conduct.
2. The Agency will reimburse the Fellow for any case-related expenses incurred by the Fellow while working on Agency cases. (ABA Rule 306 requires the College policy that Fellows are ineligible to receive financial remuneration of any kind for their clinical work, except reimbursement of actual out-of-pocket expenses.)
3. The Agency will ensure that there is control over the Fellow's work assignments so that he or she will have sufficient time available to participate meaningfully in the classroom component of the Program, some of which will occur during normal business hours. A Fellow may have a limited amount of other, non-LfA classroom responsibilities, with class meetings that are outside primary office hours (for example, a 4:30 p.m. seminar). Those responsibilities should be discussed prior to the beginning of each semester, and the Agency will enable the Fellow to meet those responsibilities, except in the case of a true emergency situation. If a Fellow wishes to participate in extra-curricular activities that may include some responsibilities during normal working hours, and has discussed them with the Agency and received approval to continue participation, the Agency will make an effort to enable the Fellow to meet those responsibilities.
4. The Agency will cooperate with reasonable requests by the faculty member responsible for the course to make time available for planned

activities related to the classroom component.

5. Each Fellow will be assigned a willing and appropriate staff attorney as a mentor.

D. FELLOW EVALUATION

1. Each Fellow will receive at least 4 evaluations of his or her work at regular intervals during the year. The timing of these evaluations will be:
 - a. No later than the mid-point of the fall semester,
 - b. No later than the end of the fall semester,
 - c. No later than the mid-point of the spring semester, and
 - d. At the end of the spring semester.
2. At the mid-semester meetings, the Agency Supervisor will meet with the Fellow to evaluate the Fellow's performance, with particular reference to ways in which the Fellow might improve. If requested by the Agency, the Faculty Supervisor will attend these meetings. Either the Fellow or the Agency Supervisor will document this meeting in a brief written memo.
3. At the meeting at the end of the fall semester, the Agency Supervisor will give a written evaluation of the Fellow to the Faculty Supervisor. This evaluation will include expectations for the second semester, determined in collaboration with each Fellow.
4. At the meeting at the end of the spring semester, the Agency Supervisor will again give a written evaluation of the Fellow to the Faculty Supervisor. Forms for the written evaluations will be provided by the College at least three weeks before the end of each semester, and will be returned to the Faculty Supervisor by the date designated in the forms.
5. The brief memos as well as the written evaluations will be available to the Faculty Supervisor. In addition to these required meetings and evaluations, the Agency Supervisor will ensure that all of the Fellow's work receives sufficient timely feedback to enable the Fellow to develop his or her professional skills.

VI. COLLEGE'S OBLIGATIONS

- A. The College will offer the Lawyers for America Program to third-year Fellows. The Program consists of a 4-unit classroom component and an 8-unit fieldwork component each semester, taken concurrently by participating Fellows.
- B. Before the Fall 2014 semester, the Agency and Faculty Supervisor will meet

to select from the College's existing courses those classes that will best enhance the Fellow's educational experience. During the Fall semester, fellows will enroll in the one-unit Legal Externship seminar; the remaining three units will be earned through one or more classes on topics relevant to municipal practice. The College will be responsible for organizing the teaching of, and producing all materials for, the classroom component.

- C. The College will give fieldwork credit to Program Fellows. To obtain credit for the fieldwork portion of the Program, a Fellow will be required to work a minimum of 32 hours a week at the Agency on cases and projects assigned and supervised by Agency staff. The Fellow will be required to work during both semesters and, except for holidays available to all members of the Agency, during the period between official College semesters, ending on Friday of the week preceding the week that ends with the College's graduation.
- D. The College will provide clear and timely notice of evaluation deadlines and other dates relevant to this Agreement and will provide the Agency Supervisor with evaluation forms and other written materials developed and/or assigned for the course, which are necessary for the Agency Supervisor to participate in the classroom component and meet obligations regarding evaluation.
- E. The College will also communicate with the Agency Supervisor at the beginning of the academic year to discuss course goals. The Faculty Supervisor will maintain contact with the Agency Supervisor during the year to assist with any problems that may arise and to facilitate integration of the classroom and fieldwork portions of the program.

VII. RENEWAL AND TERMINATION

- A. The term of this Agreement will be from August 1, 2014 to May 15, 2015.
- B. Either party may terminate this contract in accordance with the termination provision, Section IX, of the Memorandum of Agreement for the Lawyers for America Program.
- C. Procedures for termination of the Fellow are set forth in the Memorandum of Agreement, Section IX.

For the University of California
Hastings College of the Law

For the City of Berkeley
City Attorney's Office

David Seward
Chief Financial Officer

Zach Cowan
City Attorney

Approved as to Form

Approved as to Form

Elise Traynum
General Counsel

Sarah Reynoso
Assistant City Attorney