OVERSIGHT BOARD RESOLUTION NO. 2014-07

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY APPROVING A DISMISSAL AGREEMENT AMONG THE CITY OF IRVINE, THE SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY AND THE IRVINE COMMUNITY LAND TRUST

WHEREAS, the Oversight Board for the Successor Agency to the Dissolved Irvine Redevelopment Agency (the "Oversight Board") has been appointed pursuant to the provisions of Health and Safety Code Section 34179, and

WHEREAS, the Successor Agency to the Dissolved Irvine Redevelopment Agency ("Successor Agency") is a public agency pursuant to Health and Safety Code Section 34173; and

WHEREAS, the City of Irvine ("City") is a California municipal corporation operating under the laws of the State of California; and

WHEREAS, the Irvine Community Land Trust ("Land Trust") a duly organized California nonprofit public benefit corporation, certified by the United States Internal Revenue Service as a public charity under Internal Revenue Code sections 501(c)(3) and 509(a)(3); and

WHEREAS, the Irvine Redevelopment Agency ("RDA") was a public body, corporate and politic, exercising governmental functions and previously exercised powers under the Community Redevelopment Law, Health and Safety Code Section 33000 et seq. ("CRL"); and

WHEREAS, in January 2011, the Governor of California first proposed as part of the 2011-12 budget the possible dissolution of redevelopment agencies to cover an estimated $25 billion shortfall. In June 2011, Assembly Bill 26 from the 2011-12 First Extraordinary Session of the California Legislature ("ABx1 26") was enacted as a bill related to the 2011 Budget Act. In June 2012, Assembly Bill 1484 from the 2011-2012 Regular Session of the California Legislature ("AB 1484") was enacted as a bill related to the 2012 Budget Act. ABx1 26, as modified by the California Supreme Court Decision in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, dissolved all redevelopment agencies and redevelopment functions of community development commissions in California on February 1, 2012 (ABx1 26 as modified and augmented by AB 1484 is referred to hereinafter as the "Dissolution Legislation").; and

WHEREAS, pursuant to Health and Safety Code Section 34173, added by ABx1 26 and amended by AB 1484, the Successor Agency assumed on February 1, 2012, all authority, rights, powers, duties, and obligations previously vested with the RDA, except

for those provisions of the CRL that were repealed, restricted, or revised pursuant to Part 1.85 of Division 24 of the Health and Safety Code; and

WHEREAS, the City and the Successor Agency are parties to three separate lawsuits that challenge determinations made by the State of California Department of Finance ("DOF") with regard to the enforceability, under the Dissolution Legislation, of various agreements to which the City is a party. Those lawsuits include: (1) *City of Irvine et al. v. Michael Cohen, et al.* (Sacramento County Superior Court Case No. 34-2013-80001682), (2) *City of Irvine et al. v. Ana Matosantos, et al.* (Sacramento County Superior Court Case No. 34-2012-80001161), and (3) *Irvine Community Land Trust, et al. v. Ana J. Matosantos et al.* (Sacramento County Superior Court Case No. 34-2013-80001535); and

WHEREAS, the Land Trust is also a party to the third lawsuit mentioned above ("Grant Agreement Lawsuit"), which relates to the DOF's determination concerning the enforceability, under the Dissolution Legislation, of a grant agreement entered into between the Land Trust and the RDA; and

WHEREAS, the City, Successor Agency, Land Trust, DOF, and Michael Cohen in his official capacity as Director of the DOF have reached a settlement of their disputes related to the first two actions listed above (" DOF Settlement Agreement"); and

WHEREAS, the City, Successor Agency and DOF intend to jointly submit the DOF Settlement Agreement to the Sacramento Superior Court in conjunction with a request that the court enter a stipulated judgment in the above-mentioned *Cohen* case which shall incorporate the terms of the Settlement Agreement ("Stipulated Judgment"); and

WHEREAS, the City , the Successor Agency and the Land Trust have separately and concurrently entered into a Dismissal Agreement in connection with the Grant Agreement Lawsuit, an executed copy of which is attached hereto as **Exhibit "A"**; and

WHEREAS, pursuant to Health and Safety Code Section 34180, the Successor Agency has submitted the Dismissal Agreement to the Oversight Board and requested its approval of the Dismissal Agreement so that it may be valid and binding agreement; and

WHEREAS, this matter was considered by the Oversight Board at its special meeting of July 24, 2014.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Oversight Board hereby approves the Dismissal Agreement.

Section 3. The Oversight Board hereby finds and declares that, as set forth in the Dismissal Agreement, if the court approves the Stipulated Judgment, the Successor Agency shall receive certain monies from the DOF which shall be paid to the City pursuant to the terms of the Settlement Agreement. A portion of those monies shall then be paid by the City to the Land Trust in accordance with the terms of the Dismissal Agreement.

Section 4. The Secretary shall certify to the adoption of this Resolution.

PASSED AND ADOPTED by the Oversight Board at a special meeting held on the 24th day of July, 2014.

MARIAN BERGESON, CHAIR

ATTEST:

MELINDA NEUMANN, SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF IRVINE)

I, MELINDA NEUMANN, Secretary to the Oversight Board, hereby certify that the foregoing resolution was duly adopted at a special meeting of the Oversight Board, held on the 24th day of July 2014.

AYES:	5	BOARDMEMBERS:	Bergeson, Compton, Dunn, Dolleschel, Landers
NOES:	0	BOARDMEMBERS:	
ABSENT:	2	BOARDMEMBERS:	Fitzsimons, Fogarty
ABSTAIN:	0	BOARDMEMBERS:	

Melinda Neumann

MELINDA NEUMANN, SECRETARY

DISMISSAL AGREEMENT IN CONNECTION WITH STATE OF CALIFORNIA DEPARTMENT OF FINANCE SETTLEMENT NEGOTIATIONS

BY AND BETWEEN

CITY OF IRVINE

SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY

AND

IRVINE COMMUNITY LAND TRUST

n08/14/12

DISMISSAL AGREEMENT IN CONNECTION WITH STATE OF CALIFORNIA DEPARTMENT OF FINANCE SETTLEMENT NEGOTIATIONS

This Dismissal Agreement In Connection With State of California Department of Finance Negotiations ("Agreement") is entered into as of the 9th day of July, 2014 ("Effective Date") by and between CITY OF IRVINE, a California municipal corporation (the "City"), the SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY ("Successor Agency"), and the IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation (the "Land Trust"). The City, Successor Agency and the Land Trust (sometimes individually referred to herein as a "Party" and collectively referred to herein as the "Parties") hereby agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

Pursuant to Assembly Bill 26 from the 2012-12 First Extraordinary Session of the California Legislature, which was signed by the Governor on June 28, 2012, all redevelopment agency activities, except continued performance of "enforceable obligations," were immediately suspended. The California Supreme Court upheld the constitutionality of ABx1 26, revising the effective dates of certain provisions. (*California Redevelopment Assn. v. Matosantos* (2012) 53 Cal.4th 231 (the "CRA Case"). ABx1 26 is chapter 5, Statutes 2012, First Extraordinary Session, which added Part 1.8 (suspension provisions) and Part 1.85 (dissolution provisions) ("Part 1.85") of Division 24 of the Health and Safety Code. Under the CRA Case, all redevelopment agencies dissolved February 1, 2012. On June 27, 2012, the California Legislature passed, and the Governor signed, Assembly Bill 1484 ("AB 1484"), which, among other things, made certain revisions to certain of the statutes added by ABx1 26, and added Chapter 9 to Part 1.85 (ABx1 26 as modified and augmented by AB 1484 is referred to hereinafter as the "Dissolution Legislation").

The City and the Successor Agency are parties to three separate lawsuits that challenge determinations made by the State of California Department of Finance ("DOF") with regard to the enforceability, under the Dissolution Legislation, of various agreements to which the City is a party. Those lawsuits include the following: (1) *City of Irvine et al. v. Michael Cohen, et al.* (Sacramento County Superior Court Case No. 34-2013-80001682), (2) *City of Irvine et al. v. Ana J. Matosantos, et al.* (Sacramento County Superior Court Case No. 34-2012-80001161), (3) *Irvine Community Land Trust, et al. v. Ana J. Matosantos et al.* (Sacramento County Superior Court Case No. 34-2013-80001535). The first two of these lawsuits (the "City Only Lawsuits") involve (a) an agreement between the City and the former Irvine Redevelopment Agency ("Irvine RDA"), and (b) an agreement among the City, the Irvine RDA, and Heritage Fields El Toro, LLC. The third lawsuit (the "Grant Agreement Lawsuit") principally challenges DOF's determination that the "Redevelopment Affordable Housing Funds Grant Agreement" (the "RDA Grant Agreement") – entered into by and between the Land Trust and the Irvine RDA – is not enforceable under the Dissolution Legislation.

The City and DOF engaged in settlement discussions that initially sought to fully and finally resolve only the City Only Lawsuits. However, as those discussions progressed, DOF required that a settlement of the City Only Lawsuits also include a dismissal with prejudice, by both the City and the Land Trust, of the Grant Agreement Lawsuit. The City's settlement discussions with DOF have reached a point where the City is interested in securing the Land Trust's agreement to dismiss the Grant Agreement Lawsuit so that the City will have the ability to complete a settlement with DOF of the City Only Lawsuits (if mutually agreeable terms are otherwise achieved between the City and DOF).

If the City completes a settlement with DOF, the Successor Agency will receive payments, pursuant to a stipulated judgment ("Judgment") from a portion of the funds that were formerly known as "tax increment" prior to the Dissolution Legislation. The Successor Agency is then legally obligated under this Agreement to pay such funds as are received pursuant to the Judgment to the City because, under the terms of the settlement with DOF, the Judgment constitutes an enforceable obligation between the Irvine RDA and the City (Cal. Health & Safety Code § 34177(a)). The total amount of payments to the Successor Agency and City will be two hundred ninety two million dollars ($292,000,000) ("Judgment Amount"). Full payment of the Judgment Amount is forecasted to take approximately twelve (12) years. Based on property sales prices, however, full payment of the Judgment Amount could take more or less than twelve years.

As noted above, the Land Trust filed the Grant Agreement Lawsuit seeking to enforce the RDA Grant Agreement, in which the RDA pledged tax increment funds to pay for affordable housing obligations beginning in 2011 and over the next forty (40) years. The Land Trust and RDA estimated that the Land Trust would receive seven hundred and thirty-one million dollars ($731,000,000) to pay for all of the obligations the Land Trust agreed to perform under the RDA Grant Agreement. DOF has taken the position that the Grant Agreement is not an enforceable obligation, and has therefore refused to recognize any obligation to pay any funds over to the Successor Agency in order to satisfy the Grant Agreement Obligations. If the Land Trust dismisses the Grant Agreement Lawsuit, the Land Trust will forego any further opportunity to seek to overturn the DOF's determinations in this regard.

The purpose of this Agreement is to (1) secure the Land Trust's dismissal of the Grant Agreement Lawsuit with prejudice in exchange for (2) the City's commitment to pay the Land Trust fourteen million six hundred thousand dollars ($14,600,000) (the "Land Trust Dismissal Consideration"), which constitutes five percent (5%) of the Judgment Amount. The Land Trust Dismissal Consideration would be paid over time by the City to the Land Trust. Each payment to the Land Trust over time would occur within ten (10) business days following the City's receipt of a payment of a portion of the Judgment Amount to the City. The amount of each periodic payment from the City to the Land Trust shall be five percent (5%) of the amount of the corresponding periodic payment to the City toward satisfaction of the Judgment Amount.

The City's payment of the Land Trust Dismissal Consideration to the Land Trust under this Agreement is intended to facilitate the Land Trust's continued pursuit of the Affordable Housing Mission (defined below). Further, the payment of the Land Trust Dismissal Consideration to the Land Trust under this Agreement is not intended to foreclose the possibility that the Land Trust will receive additional benefits from the City (or others) in the future. By

agreeing to dismiss the Grant Agreement Lawsuit, the Land Trust will be foregoing the opportunity to seek a reversal of the DOF's determination with regard to the Grant Agreement. Therefore, in recognition of the impact of the lost opportunity to litigate with the DOF over the enforceability of the Grant Agreement and of the adverse impacts of other actions taken by the State in connection with the administration of the dissolution of redevelopment, the City remains willing, but makes no specific commitment under this Agreement, to consider providing additional land and/or funding, and consider accelerating the Land Trust Dismissal Consideration called for under this Agreement, to the Land Trust.

1.2 Parties to the Agreement

A. The City

The City is a California municipal corporation. The principal office and mailing address of the City is One Civic Center Plaza, P.O. Box 19575, Irvine, CA 92623-9575, or such other address as City shall hereafter designate in writing to the other Parties to this Agreement.

Whenever the term "City" is used in this Agreement, such term shall include any and all assignees, or successors in interest as herein provided.

B. The Successor Agency

The Successor Agency is a public agency pursuant to California Health and Safety Code section 34173. By law, the Successor Agency is the successor-in-interest of the Irvine RDA. The principal office and mailing address of the Successor Agency is One Civic Center Plaza, P.O. Box 19575, Irvine, CA 92623-9575, or such other address as Successor Agency shall hereafter designate in writing to the other Parties to this Agreement.

Whenever the term "Successor Agency" is used in this Agreement, such term shall include any and all assignees, or successors in interest as herein provided.

C. The Land Trust

The Land Trust is a duly organized California nonprofit public benefit corporation, certified by the United States Internal Revenue Service as a public charity under Internal Revenue Code sections 501(c)(3) and 509(a)(3). The principal office and mailing address of the Land Trust is One Civic Center Plaza, 3rd Floor, P.O. Box 19575, Irvine, CA 92623-9575.

As set forth in Article II of the Land Trust's Articles of Incorporation, filed on March 17, 2006 with the California Secretary of State, the specific purpose of the Land Trust "is to lessen the burdens of government by assisting the City of Irvine, California (the "City") to ensure that its residents are able to secure housing by, among other things, developing, constructing, financing, managing, selling, renting, subsidizing, and monitoring single- and multi-family housing, and to conduct or perform any ancillary or related activity in furtherance of the foregoing." Also as set forth in the Land Trust's Articles of Incorporation, the Land Trust was formed to help the City ensure that its residents are able to secure decent and affordable housing (Article II.C). In addition, the Land Trust has a fiduciary duty to maintain itself as a viable corporate entity, which necessarily includes such "ancillary and related activities" as

administration of the corporation, budgeting and planning. The duties and objectives described in this paragraph are hereinafter referred to as the "Affordable Housing Mission."

Whenever the term "Land Trust" is used in this Agreement, such term shall include any and all assignees, or successors in interest as herein provided.

2. SUCCESSOR AGENCY'S AGREEMENT TO PROVIDE FUNDS RECEIVED PURSUANT TO JUDGMENT TO CITY AND CITY'S AGREEMENT TO PROVIDE FUNDS TO LAND TRUST TO BE PAID OUT OF THE PROCEEDS OF THE JUDGMENT

Successor Agency agrees to provide all funds received pursuant to the Judgment to the City.

Upon its receipt of each periodic payment in satisfaction of the Judgment Amount, the City shall pay to the Land Trust an amount equal to five percent (5%) of such periodic payment. The City's payment to the Land Trust shall occur within ten (10) business days following the City's receipt of a periodic payment toward the satisfaction of the Judgment Amount. Along with each of the City's payments, the City agrees to provide documentation to the Land Trust that evidences the amount of the total periodic payment received by the City. The City shall continue to make such periodic payments to the Land Trust until The Land Trust Dismissal Consideration is fully paid. Nothing in the foregoing prevents the City, in its sole and absolute discretion, from paying more than five percent (5%) to the Land Trust and/or accelerating payments to the Land Trust.

3. LAND TRUST'S AGREEMENT TO DISMISS WITH PREJUDICE AND TO REFRAIN FROM CLAIMING ON ANY FUTURE RECOGNIZED OBLIGATION PAYMENT SCHEDULE THAT THE GRANT AGREEMENT IS AN ENFORCEABLE OBLIGATION OF THE STATE

Land Trust agrees to dismiss the Grant Agreement Lawsuit with prejudice within three (3) business days of receiving a written demand for such dismissal from City. The Land Trust further agrees that it shall never again claim on any future Recognized Obligation Payment Schedule that the Grant Agreement is an enforceable obligation of the former Irvine Redevelopment Agency.

Notwithstanding the preceding paragraph of this Section 3, in no event shall the Land Trust be required to dismiss the Grant Agreement Lawsuit under this Agreement, or to refrain from claiming on any future Recognized Obligation Payment Schedule that the Land Trust Agreement is an enforceable obligation of the Irvine RDA, unless all four conditions precedent described in Section 4 have been fulfilled.

The DOF and Michael Cohen in his capacity as the Director of the DOF are express third party beneficiaries of all of the obligations set forth in this Section 3.

4. CONDITIONS PRECEDENT

This Agreement shall have no force or effect unless (1) the City and the Successor Agency enter into a settlement agreement with DOF that provides for payment of the Judgment Amount to the Successor Agency for the purposes of paying the Judgment Amount over to the City, and (2) said settlement agreement is attached to a Stipulated Judgment in the *City of Irvine et al. v. Michael Cohen, et al.* and the Stipulated Judgment is approved by the Court, and (3) said settlement agreement requires the dismissal of the Grant Agreement Lawsuit, and (4) the City issues a written demand to the Land Trust for a dismissal with prejudice in accordance with Section 3, above.

5. USE OF LAND TRUST DISMISSAL CONSIDERATION

Land Trust agrees to expend the Land Trust Dismissal Consideration on the Affordable Housing Mission, including the Land Trust's operational, planning and general administrative activities, or for such other purposes as the City and Land Trust may mutually agree upon.

6. LEGAL ACTIONS

6.1 Specific Performance

In the event of a default under this Agreement, the non-defaulting party, shall be permitted, but not obligated, to commence an action for specific performance of the terms of this Agreement, or to cure, correct or remedy any default hereunder or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement. In this regard, the Parties specifically acknowledge that the Land Trust is entering into this Agreement for the purpose of furthering the Affordable Housing Mission and assisting the City in its effort to reach a settlement of the City Only Lawsuits. In no event shall any Party be entitled to damages of any kind from the other party, including, without limitation, damages for economic loss, lost profits, or any other economic or consequential damages of any kind.

6.2 Applicable Law

The internal laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

6.3 Acceptance of Service of Process

In the event that any legal action is commenced by the Land Trust against the City and/or the Successor Agency, service of process on the City and/or the Successor Agency shall be made by personal service upon the City Manager and/or the Executive Director of the Successor Agency, or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City and/or the Successor Agency against the Land Trust, service of process on the Land Trust shall be made by personal service upon the Executive Director of the Land Trust or in such other manner as may be provided by law.

6.4 Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7. GENERAL PROVISIONS

7.1 Notices, Demands and Communications Between Parties

Written notices, demands and communications between the City, Successor Agency and the Land Trust shall be sufficiently given if (1) delivered by hand, (2) delivered by reputable same-day or overnight messenger service that provides a receipt showing date and time of delivery, or (3) dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City, Successor Agency and the Land Trust at the addresses specified in Section 1.2.A and 1.2.B, respectively. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 7.1.

Any written notice, demand, or communication shall be deemed received immediately if delivered by hand or delivered by messenger in accordance with the preceding paragraph, and shall be deemed received on the third (3rd) day from the date it is postmarked if delivered by registered or certified mail in accordance with the preceding paragraph.

7.2 Conflicts of Interest

No member, officer, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

7.3 Interpretation; Entire Agreement, Waivers; Amendments

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Parties, and all amendments or modifications hereto must be in writing and mutually agreed to by the appropriate authorities of the Parties. Except as otherwise expressly provided, in any circumstance where under this Agreement either Party is required to approve or disapprove any matter, approval shall not be unreasonably withheld.

7.4 Time of Essence

Time is of the essence in the performance of this Agreement.

7.5 Maintenance of Books and Records

The Parties shall prepare and maintain all books, records, and reports necessary to substantiate each Party's compliance with the terms of this Agreement.

7.6 Right to Inspect

Each Party shall have the right, upon not less than five (5) business days' notice, at all reasonable times during business hours, to inspect the books and records of the other Party pertinent to the purposes of this Agreement. Said right of inspection shall not extend to documents privileged under attorney-client or other such privileges.

7.7 Binding Effect of Agreement; Assignments

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their legal representatives, successors, and assigns. This Agreement shall not be assigned by any of the Parties to any third party without the prior written consent of the other Parties, which the other Parties may grant or withhold in their sole and absolute discretion.

7.8 Counterparts

This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by the Parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

7.9 Severability

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties.

IN WITNESS WHEREOF, the City, the Successor Agency and the Land Trust have signed this Agreement as of the date set forth above.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

CITY OF IRVINE, a California municipal corporation

By: _____
Dr. Steven Choi, Mayor

ATTEST:

_____
City Clerk

ATTEST:

_____
Secretary

SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY

By: _____
Dr. Steven Choi, Director

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

_____
City Attorney

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

By: _____
Mark Asturias, Executive Director

APPROVED AS TO FORM:
HENSLEY LAW GROUP

_____
Land Trust Special Counsel

CITY OF IRVINE, a California municipal corporation

By: _____
Dr. Steven Choi, Mayor

ATTEST:

_____
City Clerk

ATTEST:

SUCCESSOR AGENCY TO THE DISSOLVED IRVINE REDEVELOPMENT AGENCY

_____
Secretary

By: _____
Dr. Steven Choi, Director

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

_____
City Attorney

IRVINE COMMUNITY LAND TRUST, a California nonprofit public benefit corporation

By: _____
Mark Asturias, Executive Director

APPROVED AS TO FORM:
HENSLEY LAW GROUP

_____
Land Trust Special Counsel