

# MILPITAS OVERSIGHT BOARD

TO THE RDA SUCCESSOR AGENCY FOR THE CITY OF MILPITAS

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455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479  
GENERAL INFORMATION: 408-586-3000 [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)

## SPECIAL MEETING OF THE MILPITAS OVERSIGHT BOARD

**Tuesday, December 2, 2014, at 3:00 PM**

Milpitas City Hall, Committee Room  
455 E. Calaveras Blvd., Milpitas, CA

### **MEMBERS:**

*Maribel Medina, Chair*  
*Armando Gomez*  
*Emma Karlen*  
*Bruce Knopf*  
*Mike Mendizabal*  
*Mike McInerney*  
*Glen Williams*

## **AGENDA**

### **I. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE**

### **II. PUBLIC FORUM:**

*Public comments regarding any subject not on the agenda, limited to three minutes.*

### **III. APPROVAL OF AGENDA**

### **IV. APPROVAL OF MINUTES FOR NOVEMBER 3, 2014, MEETING**

### **V. OLD BUSINESS:**

- A. Review and Approve Long Range Property Management Plan
- B. Make Determinations and Approve the Issuance of Refunding Bonds for 2003 Tax Allocation Bonds

### **VI. NEW BUSINESS**

- A. Approve Procurement Process and Authorize the Oversight Board Chair or a Subcommittee to Negotiate a Contract with New Oversight Board Counsel
- B. Receive Update on Appraisal Process and Take Any Action Required to Complete Appraisal Process

## **VII. SET NEXT MEETING DATE**

## **VIII. MEETING ADJOURNMENT**

Pursuant to the Brown Act, the public has an opportunity to speak on any matter on the agenda, or to any matter not on the agenda within the subject matter jurisdiction of the agency. Comments are limited to no more than 3 minutes per speaker, unless modified by the Board Chair. By law, no action may be taken on any item raised during public comment on items not on the agenda, although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the agency.

**Note:** The Board may take action on any matter, however listed on the Agenda, and whether or not listed on this Agenda, to the extent permitted by applicable law.

If requested, this agenda can be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact the Oversight Board Clerk for further information. In addition, a person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting, should contact the Board Clerk as soon as possible. The Board Clerk may be reached at [barb.crump@gmail.com](mailto:barb.crump@gmail.com).

# MILPITAS OVERSIGHT BOARD

## TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

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### MILPITAS OVERSIGHT BOARD MEETING

Milpitas City Hall, Committee Room  
455 E. Calaveras Blvd., Milpitas, CA

#### MEMBERS:

*Maribel Medina, Chair*  
*Michael Mendizabal*  
*Armando Gomez*  
*Emma Karlen*  
*Bruce Knopf*  
*Mike McInerney*  
*Glen Williams*

#### ALTERNATES:

*Nimrat Johal*  
*Felix Reliford*  
*Jane Corpus Takahashi*  
*Michael Murdter*  
*Alan Minato*

### DRAFT Minutes of the November 3, 2014, Meeting

#### **I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE**

Chair Medina called the meeting to order at 4:00 pm.

#### **ROLL CALL**

**MEMBERS PRESENT:** Maribel Medina, Emma Karlen, Bruce Knopf, Mike McInerney, Mike Mendizabal, Felix Reliford and Glen Williams

**MEMBERS ABSENT:** None

#### **II. PUBLIC FORUM** None

#### **III. APPROVAL OF AGENDA**

Moved by Mr. Knopf and seconded by Mr. Williams, to approve the agenda. The motion passed unanimously.

#### **IV. APPROVAL OF MINUTES FOR September 18, 2014 meeting.**

Moved by Mr. Knopf and seconded by Mr. McInerney, to approve the agenda. The motion passed unanimously.

#### **V. OLD BUSINESS**

**A. Receive Update on Communications with DOF Regarding ROPS 14-15B, and Adopt a Resolution directing Successor Agency Staff to Obtain Approval of Future Revised ROPS from Oversight Board Counsel Prior to Submission to DOF**

Ms. Gore presented the staff report recommending that the Oversight Board adopt the proposed resolution directing Successor Agency staff to submit all future, final Recognized Obligation Payment Schedules (ROPS) to Oversight Board counsel for approval prior to submission to the Department of Finance (DOF), and direct Oversight Board counsel to send a letter to DOF reminding DOF that Oversight Board counsel was designated as the official contact for DOF.

After a brief discussion it was moved by Mr. Knopf and seconded by Mr. Williams to approve the resolution with the following amendments: Strike the word "REVISED" on the third line of the title of the resolution and revise the NOW, THEREFORE, BE IT RESOLVED, to reflect that the Oversight Board directs Successor Agency staff to obtain approval of future final versions of ROPS from Oversight Board counsel consistent with Oversight Board action prior to submitting such ROPS to DOF through the RAD-app. The revised resolution was unanimously approved.

#### **B. Direct successor Agency Staff to Pay Invoices for Oversight Board Administrative and Legal Services**

Ms. Gore presented the staff report directing Successor Agency staff to pay outstanding invoices for the Oversight Board's Administrative and Legal Services or provide a legal justification for refusing to carry out this administrative task. Ms. Gore stated that the invoices at issue have been approved for payment by the Oversight Board Chair, who received a detailed legal invoice, and forwarded a summary sheet to the Successor Agency for payment. The Chair instructed staff that information requested by Successor Agency is protected under Attorney/Client Privilege, and disclosure would waive that privilege.

Ms. Karlen indicated the County clerk invoices were not received until October 20, 2014, and that the Successor Agency has no problem paying the invoices. As to the invoices for legal services, Ms. Karlen also said the City is subject to audits by the County of Santa Clara and State Department of Finance every six (6) months and therefore needs more detail including dates of service. Mr. Tom Williams added that the previous Chair's method of forwarding invoices was acceptable and that he cannot approve a payment without back-up. Mr. Ogaz added that they are not asking for specific detail other than a date and type of service.

Glen Williams suggested including a summary page that the Successor Agency sees on a statement that includes the date range, total hours, and billing rate.

Moved by Mr. Knopf and seconded by Mr. Williams to adopt the resolution with the following amendments; revise the BE IT FURTHER RESOLVED, to strike the final clause, and to add language clarifying that the summaries will include total billable hours, billing rates, and dates of service." The resolution was unanimously approved.

### **VI. NEW BUSINESS**

#### **A. Review and Approve Long Range Property Management Plan**

Ms. Gore presented the staff report recommending that the Oversight Board receive an update on the progress of the Long Range Property Management Plan (LRPMP), and review and approved the proposed LRPMP if a draft is available.

Discussion: Mr. Ogaz said the City and the County have exchanged a draft LRPMP. Discussion continues and hopefully they will be able to present a plan at the next Oversight Board meeting. Chair Medina asked if the first week in December would be possible to have a draft of the LRPMP. It was agreed that the next meeting will be Tuesday, December 2, 2014, at 3:00 p.m., to allow the LRPMP to be adopted prior to the statutory deadline.

#### **B. Approve Selection of Property Appraiser(s) and Authorize Appointed Subcommittee to Approve Contracts**

Mr. Glen Williams presented the staff report and recommend that the Oversight Board approve the subcommittee's recommendation to approve all three of the responding property appraisers. Mr. Williams explained that the subcommittee would contact all 3 firms and inform them that they have met the requirements and would likely divide the properties among the appraisers to expedite the appraisal process.

After a brief discussion, it was moved by Mr. Williams and seconded by Ms. Medina to authorize the committee to negotiate with all three (3) firms (Hulberg & Associates, now known as Valbridge, CBRE and Colliers) and select the best qualified to complete each of the individual assignments. . The resolution was unanimously approved.

**C. Authorize Successor Agency Staff to Contract with Necessary Consultants for 2003 Tax Allocation Bond Refunding, Including Bond Counsel, Financial Advisory Services, and Independent Fiscal Consultant**

Ms. Karlen presented the staff report recommending that the Oversight Board authorize Successor Agency staff to contract with Fieldman Rolapp and Associates for Financial Advisory Services, Fraser & Associates for Independent Fiscal Consultants Services, and with Jones Hall for Bond Counsel and Disclosure Counsel Services for the issuance of tax allocation refunding bonds.

After a discussion on the selection process it was moved by Mr. Mendizabal and seconded by Mr. Knopf to authorize the Successor Agency to contract with the three recommended consultants. The resolution was unanimously approved.

**D. Consider Request to Approve Fixed Fee for City Staff Services Related to 2003 Tax Allocation Bond Refunding**

Ms. Karlen presented the staff report recommending the Oversight Board consider Successor Agency staff's request that the Oversight Board approve a \$25,000 fixed fee for City staff services related to the proposed 2003 Tax Allocation Bond Refunding.

Moved by Mr. Williams and seconded by Mr. Knopf to approve the resolution approving a fixed fee for City Staff Services. The resolution was unanimously approved.

**VII. SET NEXT MEETING DATE**

The next meeting will be Tuesday, December 2, 2014, at 3:00 p.m.

**VIII. MEETING ADJOURNMENT**

Chair Medina adjourned the meeting at 4:51 p.m.

*Meeting minutes drafted and submitted by  
Barbara Crump, Board Secretary*

*Approved on November 3, 2014:*

\_\_\_\_\_  
Maribel Medina  
Oversight Board Chair

\_\_\_\_\_  
Barbara Crump  
Oversight Board Secretary

## **OVERSIGHT BOARD STAFF REPORT**

**MEETING DATE:** December 2, 2014

### **ITEM V.A: REVIEW AND APPROVE LONG RANGE PROPERTY MANAGEMENT PLAN**

#### **RECOMMENDED ACTION(S):**

Review and approve a Long Range Property Management Plan (LRPMP) for submission to the Department of Finance prior to the statutory deadline.

#### **BACKGROUND:**

Dissolution Law requires the disposal of all real property owned by the former Redevelopment Agency. The disposal process is to be carried out pursuant to a Long Range Property Management Plan prepared by the Successor Agency and approved by the Successor Agency Oversight Board no later than six months following the issuance of the successor Agency's Finding of Completion. Once approved, all property held in trust by the Successor Agency must be disposed of according to the LRPMP.

The LRPMP must include an inventory of all the real properties of the former redevelopment agency, and it must address the disposition and use of the properties.

The inventory must include all of the following information:

- (A) The date of the acquisition of the property and the value of the property at that time, and an estimate of the current value of the property.
- (B) The purpose for which the property was acquired.
- (C) Parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.
- (C) An estimate of the current value of the parcel including, if available, any appraisal information.
- (D) An estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.
- (E) The history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.
- (F) A description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.
- (G) A brief history of previous development proposals and activity, including the rental or lease of property.

There are four permissible ways to dispose of or use the former redevelopment agencies properties, including:

- (1) Retention of the property for ongoing governmental use.
- (2) Retention of the property for future development.
- (3) Sale of the property.
- (4) Use of the property to fulfill an enforceable obligation.

The plan must separately identify and list properties to be dedicated to governmental use and properties to be retained for the purpose of fulfilling an enforceable obligation.

If the plan directs the use or liquidation of property for a project identified in an approved redevelopment plan, the property shall transfer to the city, county, or city and county.

If the plan directs the liquidation of the property or the use of revenues generated from the property for any purpose other than to fulfill an enforceable obligation or other than for a project identified in an approved redevelopment plan, the proceeds from the sale shall be distributed as property tax to the taxing entities.

Government Use properties are defined in Section 34181 (a), which states, in relevant part:

...the oversight board may... direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset.

**DISCUSSION:**

As the Oversight Board has previously discussed, the settlement agreement between the County, the Department of Finance, the County Office of Education, the Successor Agency, the City of Milpitas, and the Milpitas Economic Development Corporation included a Section (Section 3.d.), which addresses the creation of LRPMP pursuant to Health and Safety Code section 34191.5.

Consistent with the settlement agreement, the LRPMP specifies that the following parcels will be liquidated in a manner that maximizes the financial returns to the affected taxing entities:

APN	Address	Description
028-24-025	86 N. Main Street	Vacant Parcel
086-02-086	Alder Drive and Barber Lane	Vacant Parcel
028-34-001 through 028-34-094	230 N. Main Street	Vacant Parcel

It further specifies that the following parcels will be disposed of as determined by the Oversight Board:

APN	Address	Description
022-08-003	96 N. Main Street	County Health Center Parking Garage
086-10-025	540 S. Abel Street	Cracolice Building

While the LRPMP is consistent with the settlement agreement, the Oversight Board must determine how it wishes to dispose of the County Health Center Parking Garage and the Cracolice Building. The draft LRPMP proposes that the County Health Center Parking Garage either be retained for governmental use or sold, and it proposes that the Cracolice Building be retained for governmental use.

Because the LRPMP, once approved by DOF, will govern and supersede all other provisions relating to the disposition and use of the real property assets of the Successor Agency, staff recommends that the Oversight Board also make additional determinations at this time regarding timing and process for disposing of each property. This will require the Oversight Board to provide direction to staff on additional language to be incorporated in the LRPMP prior to submission to DOF.

**ATTACHMENT(S):**

Proposed LRPMP  
Draft Resolution Approving LRPMP

Prepared by: Jennifer Gore  
Oversight Board Legal Counsel

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY  
OF THE CITY OF MILPITAS**

**LONG RANGE PROPERTY MANAGEMENT PLAN**

**Health and Safety Code §34191.5**

**Property #1  
86 N. Main Street  
(Vacant Land)**

1. **Date of acquisition, its value at that time and estimated current value.**  
Date of acquisition: 12/20/2004  
Value at that time: \$401,689.68  
Estimated current value: To be determined, appraisal is underway.
2. **Purpose for which property was acquired.**  
Property was purchased for adjacent library acquisition and construction lay down site.
3. **Parcel data, including address, lot size, and current zoning.**  
Address: 86 N. Main Street, Milpitas CA 95035  
APN: 028-24-025  
Size: 60.44' x 104.98'  
Zoning: Mixed Use
4. **Estimate of current value of the parcel including any appraisal information.**  
Appraisal of the Property is underway by the Oversight Board Task Force.
5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**  
Property is non-revenue generating bare land with no current use.
6. **History of environmental contamination and any related studies or remediation efforts.**  
Successor Agency (SA) is not aware of any environmental contamination of this site.
7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**  
SA sees little potential for transit-oriented development of this site or how it might be utilized to advance the planning objectives of the SA because of its small size unless assembled with adjacent properties.
8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

No known prior development proposals. Prior use as a lay-down site for Milpitas Library construction.

9. **Identify the use or disposition of the property.**
- a. Retained for governmental use
  - b. Retained for future development
  - c. Retained to fulfill enforceable obligation
  - e. Sell the property

The property will be designated for sale to maximize the financial returns to the affected taxing entities in accord with section 3e of the Settlement Agreement. All sales shall be approved by the Oversight Board and all proceeds distributed to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

**Property #2**  
**Alder Drive and Barber Lane**  
**(Vacant Land)**

1. **Date of acquisition, its value at that time and estimated current value.**  
Date of acquisition: 8/2000  
Value at that time: \$6,988,800.00  
Estimated current value: To be determined, appraisal is underway.
2. **Purpose for which property was acquired.**  
General economic development.
3. **Parcel data, including address, lot size, and current zoning.**  
Address: Alder Drive and Barber Lane, Milpitas, CA 95035  
APN: 086-02-086  
Size: 3.34 Acres  
Zoning: Industrial Park
4. **Estimate of current value of the parcel including any appraisal information.**  
Appraisal of the Property is underway by the Oversight Board Task Force.
5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**  
There is no lease or rental agreement encumbering this property which is non-revenue generating bare land.
6. **History of environmental contamination and any remediation efforts.**  
SA is not aware of any environmental contamination associated with this site.
7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**  
The SA would like to develop the site into a hotel because of the very high demand for hotel occupancy at this time in the region. SA would like to enter into a Development Agreement with a specific hotel developer to build a high end hotel facility (A-Loft Hotel) including restaurant and banquet facility. It is anticipated that the property would be

conveyed to the developer at fair market value under a development agreement. Fair market value will be determined by the attached appraisal commissioned by the SA in conjunction with the Oversight Board. Proceeds of the sale will be distributed to the affected taxing entities. Increased assessed valuation from bare land to high end hotel will create future long term benefit to the affected taxing entities.

8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

The property was originally purchased as a potential hotel site. At one point in 2008 there was a proposal to build a hospital on this site. It did not make it to the formal application stage. No prior knowledge of any use for this bare land site.

9. **Identify the use or disposition of the property.**

- a. Retained for governmental use
- b. Retained for future development
- c. Retained to fulfill enforceable obligation
- e. Sell the property

The property will be designated for sale to maximize the financial returns to the affected taxing entities in accord with section 3e of the Settlement Agreement. All sales shall be approved by the Oversight Board and all proceeds distributed to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

**Property #3**  
**230 N. Main Street**  
**(Vacant Land)**

1. **Date of acquisition, its value at that time and estimated current value.**

Date of acquisition: 8/20/2010

Value at that time: \$6,800,000.00

Estimated current value: To be determined, appraisal is underway.

2. **Purpose for which property was acquired.**

Property was purchased for development into a public park and historical museum site.

3. **Parcel data, including address, lot size, and current zoning.**

Address: 230 North Main Street, Milpitas, CA 95035

APN: 028-34-001 through 028-34-094

Size: Collective size: 1.609 Acres

Zoning: Park and Open Space

4. **Estimate of current value of the parcel including any appraisal information.**

Appraisal of the Property is underway by the Oversight Board Task Force.

5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**

No current lease, rental or other revenue generated by this bare land site.

6. **History of environmental contamination and any remediation efforts.**

Historically the property was owned and operated by Standard Oil/Chevron as a bulk oil facility and fuel service station from at least 1920 to the mid 1970s, which had utilized underground and above ground storage tanks. A Soil Investigation Report dated 8/13/02 reported the Santa Clara Valley Water District had “closed” a former case of leaking underground storage tanks on 12/28/98 after remediation. A Phase I Environmental Assessment report dated 9/12/02 indicated prior remedial action had been taken and no further remedial action was recommended. A further Phase I Environmental Assessment report dated 8/18/04 also did not recommend any remedial action. A Soil Quality Evaluation and Geophysical Survey Report dated 8/27/04 recommended remediation of arsenic impacted soil prior to site development.

7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**

There is potential for transit oriented development at this site since it is adjacent to several bus lines, both on Main Street as well as Calaveras Blvd., which is nearby. Site is adjacent to the proposed BART line, although not near any proposed station. A public park or mixed use development of the site would be consistent with the planning objectives of the SA.

8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

A private sector proposal to develop the property for Mixed use residential and neighborhood commercial was approved and map for Apton Plaza approved but project was never built as a result of financing difficulties incurred in the recession circa 2009. Thereafter, SA purchased the site for potential development of a Park and Historical Museum and incorporated such a proposal into its Park Master Plan and General Plan.

9. **Identify the use or disposition of the property.**

- a. Retained for governmental use
- b. Retained for future development
- c. Retained to fulfill enforceable obligation
- e. Sell the property

The property will be designated for sale to maximize the financial returns to the affected taxing entities in accord with section 3e of the Settlement Agreement. All sales shall be approved by the Oversight Board and all proceeds distributed to the taxing entities pursuant to Health and Safety Code Section 34191.5(c)(2)(B).

**Property #4**  
**93 North Main Street**  
**(County Health Center Parking Garage)**

1. **Date of acquisition and its value at that time and estimated current value.**

Date of acquisition: 3/15/2005

Value at that time: \$3,798,883.75

Estimated current value: There is no current estimate of value.

2. **Purpose for which property was acquired.**

Acquired for economic development purposes and eventually to provide for general public parking and parking serving adjacent County Health Building.

3. **Parcel data, including address, lot size, and current zoning.**

Address: 93 North Main Street, Milpitas, CA 95035  
APN: 022-08-003  
Size: 1.005 Acres  
Zoning: Institutional

4. **Estimate of current value of the parcel including any appraisal information.**

There is no current estimate of value.

5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**

See attached Ground Lease agreement with the County of Santa Clara.

6. **History of environmental contamination and any remediation efforts.**

The property is part of the Santa Clara County Health Center project and subject to a Development and Disposition Agreement (DDA) dated 8/29/06 with the County. The DDA provides the parcel be leased to the County, which would construct the Health Center garage pursuant to the conditions set forth in that certain Ground Lease entered into between the parties. An Environmental Impact Report (EIR #2004082131) for the North Main Street Development project which includes this parcel was certified by the City Council on 1/4/05, and contains a Mitigation Monitoring and Reporting Program (MMRP). The Ground Lease provides that the County shall comply with all environmental mitigation, monitoring, and reporting requirements applicable to the Health Center Garage pursuant to the MMRP. Environmental contamination reporting and/or remediation efforts therefore have been the responsibility of the County of Santa Clara. The DDA, Ground Lease, EIR, and MMRP are voluminous and available for review upon request.

7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**

The property is currently contractually committed to a long-term use as a parking facility for the County's health clinic and other public use.

8. **A brief history of previous development proposals and activity, including the rental or lease of property.**

Property purchased for economic development purposes and ultimately utilized for the County Health Clinic and other public parking.

9. **Identify the use or disposition of the property.**

- a. Retained for governmental use
- b. Retained for future development
- c. Retained to fulfill enforceable obligation
- e. Sell the property

To be determined by the Oversight Board.

**Property #5**  
**540 South Abel Street**  
**(Cracolice Building)**

1. **Date of acquisition and its value at that time and estimated current value.**  
Date of acquisition: 4/7/05  
Value at that time: \$39,441.00  
Estimated current value: To be determined, appraisal underway.
2. **Purpose for which property was acquired.**  
Recreational purposes.
3. **Parcel data, including address, lot size, and current zoning.**  
Address: 540 South Abel Street, Milpitas, CA 95035  
APN: 086-10-025  
Size: .71 Acres  
Zoning: Mixed Use
4. **Estimate of current value of the parcel including any appraisal information.**  
Appraisal of the Property is underway by the Oversight Board Task Force.
5. **Estimate of any lease, rental, or any other revenues generated by the property, and description of the contractual requirements for the disposition of those funds.**  
Property is used for recreational programs and generates fees through those programs and is also rented for private events which also creates revenue.
6. **History of environmental contamination and any remediation efforts.**  
Unknown.
7. **Description of the property's potential for transit-oriented development and the advancement of the planning objectives of the successor agency.**  
Located along Abel Street with bus lines operating regularly. This property could be utilized for transit-oriented development under the current mixed use zoning and is within the Midtown Specific Plan Area. However, the current use is as a community recreation facility. SA plans to continue this use but acknowledges that taxing entities may claim any "profit" from revenue sources should be distributed to the taxing entities. Revenues from the property do not exceed the cost of maintenance and utilities and SA will provide verification of this fact.
8. **A brief history of previous development proposals and activity, including the rental or lease of property.**  
Property was used as a Senior Center and has been used for recreational purposes both through private provider (YMCA) and through current user and occupant, the City of Milpitas Recreation Department.
9. **Identify the use or disposition of the property.**
  - a. Retained for governmental use
  - b. Retained for future development

- c. Retained to fulfill enforceable obligation
- e. Sell the property

To be determined by the Oversight Board.

**RESOLUTION NO.**

**RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF  
THE FORMER MILPITAS REDEVELOPMENT AGENCY  
APPROVING A LONG RANGE PROPERTY MANAGEMENT PLAN**

**WHEREAS**, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the "Dissolution Law"); and

**WHEREAS**, the Dissolution Law requires the Successor Agency to submit a long-range property management plan ("LRPMP") to the Department of Finance for approval no later than six months following the issuance of a finding of completion; and

**WHEREAS**, the Milpitas Successor Agency received its finding of completion from the Department of Finance on June 27, 2014; and

**WHEREAS**, the settlement agreement resulting from the litigation between the County of Santa Clara, the County Office of Education, the State of California, the Milpitas Successor Agency, the City of Milpitas, and the Milpitas Economic Development Corporation ("Settlement Agreement") provides that a jointly prepared LRPMP shall be submitted to the Oversight Board no later than ninety (90) business days following the satisfaction of certain requirements in the settlement agreement; and

**WHEREAS**, pursuant to section 34191.5(b) of the Dissolution Law, and the Settlement Agreement, the Successor Agency has prepared a LRPMP to address the disposition and use of the real properties of the Successor Agency, and has submitted it to the Oversight Board;

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board has considered the full record before it, which includes but is not limited to the accompanying staff report, testimony by staff and the public, and other materials and evidence provided to it.

**BE IT FURTHER RESOLVED** that the Oversight Board approves the LRPMP, as revised during the December 2, 2014, meeting, and in substantially the same form as attached hereto and incorporated herein by this reference.

**BE IT FURTHER RESOLVED** that the Oversight Board directs its staff to do all of the following:

- a. To revise the LRPMP prior to its submission to DOF in order to fully and accurately reflect the approval actions taken by the Oversight Board; and
- b. To submit the LRPMP, as approved by the Oversight Board, to DOF, and to take such other administrative actions as may be needed to comply with applicable laws.

**BE IT FURTHER RESOLVED** that the Oversight Board authorizes and directs Successor Agency staff to dispose of the real properties and related proceeds only as described in the LRPMP, provided that the following actions shall require Successor Agency, Oversight Board, and DOF consideration and approval:

- a. Requests for Proposals for the disposition of real property to be disposed of by the Successor Agency; and
- b. Actions by the Successor Agency to dispose of real property; and
- c. Compensation Agreements pursuant to section 34180 (f)(1) of the Dissolution Act.

**PASSED AND ADOPTED** this 2nd day of December, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Barbara Crump  
Oversight Board Secretary

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Maribel S. Medina  
Oversight Board Chair

## **OVERSIGHT BOARD STAFF REPORT**

**MEETING DATE:** December 2, 2014

### **ITEM V.B: APPROVE REQUEST TO MAKE DETERMINATIONS AND APPROVE THE ISSUANCE OF REFUNDING BONDS FOR 2003 TAX ALLOCATION BONDS**

#### **RECOMMENDED ACTION(S):**

Approve the Successor Agency staff's request that the Oversight Board make the necessary findings to approve the issuance of refunding bonds to take advantage of lower interest rates.

#### **BACKGROUND:**

As reflected in the attached report from Successor Agency staff, section 34177.5 of the Health and Safety Code addresses the ability of a Successor Agency to issue refunding bonds.

Specifically, section 34177.5 provides successor agencies with the authority, rights, and powers to issue bonds to refund bonds of the former redevelopment agency to provide savings to the successor agency. (§ 34177.5, subd. (a)(1).) This power is conditioned on the successor agency demonstrating that (A) the total interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds shall not exceed the total remaining interest cost to maturity on the bonds or other indebtedness to be refunded, plus the remaining principal of the bonds to be refunded; and (B) the principal amount of the refunding bonds shall not exceed the amount required to defease the refunded bonds or other indebtedness, to establish customary debt service reserves, and to pay related costs of issuance (§ 34177.5, subd. (a)(1)).

Section 34177.5, subdivision (c), further provides that prior to incurring any bonds, the successor agency may subordinate to the bonds the amount required to be paid to an affected taxing entity pursuant to paragraph (l) of section 34183, subdivision (a), subject to various conditions. (§ 34177.5, subd. (c)(1)-(3).)

The Dissolution Law further provides that a successor agency must make diligent efforts to ensure that the lowest long-term cost financing is obtained, which financing cannot provide for any bullets or spikes, and shall not use variable rates. It also requires the successor agency to make use of an independent financial advisor in developing financing proposals and to make work products of the financial advisor available to DOF at its request. (§ 34177.5, subd. (h).)

#### **DISCUSSION:**

Per Health and Safety Code section 34177.5, subdivision (a)(1), before the Successor Agency can issue refunding bonds, the Oversight Board must find that the proposed refunding will meet the statutory criteria set forth above. The report provided by Successor Agency staff includes a Debt Service Savings Analysis, demonstrating that the proposed refunding meets the statutory criteria.

The attached resolution includes the statutory findings, as set forth above. The resolution also provides that the Successor Agency is authorized to recover its costs related to the issuance of refunding bonds. Staff has spoken to Jones Hall, the Successor Agency's bond counsel, and confirmed that this is the same \$25,000 in expenses approved by the Oversight Board at its November 3<sup>rd</sup> meeting.

The resolution further authorizes the Successor Agency to pay "continuing costs of issuance" from property tax revenue. This would require the Successor Agency to include these items on future Recognized Obligation Payment Schedules (ROPS) for approval by the Oversight Board.

“Continuing costs of issuance” would include trustee’s fees, auditing fees and continuing disclosure and rating agency costs, which are currently included in the Successor Agency’s administrative budget. If included on a future ROPS, they would not also be included in future administrative budgets.

A link to copies of the draft Indenture, Irrevocable Refunding Instructions, and Bond Purchase Agreement are also available: [http://www.ci.milpitas.ca.gov/government/task\\_force/oversight\\_board.asp](http://www.ci.milpitas.ca.gov/government/task_force/oversight_board.asp).

**ATTACHMENT(S):**

Successor Agency Memo with Debt Service Savings Analysis  
Resolution

Prepared by: Jennifer Gore  
Oversight Board Legal Counsel

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**OVERSIGHT BOARD MEMORANDUM**

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**TO:** OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MILPITAS RDA  
**FROM:** EMMA KARLEN, CITY OF MILPITAS ASSISTANT CITY MANAGER/FINANCE DIRECTOR  
**SUBJECT:** APPROVE THE ISSUANCE OF REFUNDING BONDS, MAKE CERTAIN DETERMINATIONS WITH RESPECT TO THE REFUNDING BONDS AND APPROVE OTHER RELATED MATTERS  
**DATE:** 11/24/14  
**CC:** JENNIFER GORE, OVERSIGHT BOARD GENERAL COUNSEL

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The Former Milpitas Redevelopment Agency issued its Redevelopment Project Area No. 1 2003 Tax Allocation Bonds (“2003 TABs”) secured by tax increment revenues derived from the Redevelopment Project Area No. 1. The current outstanding par amount of the 2003 TABs is \$145,990,000 and the bonds are callable on any date at par value or at 100%.

Section 34177.5 of the California Health and Safety Code authorizes the Successor Agency to issue refunding bonds for the purpose of achieving the debt service savings within the parameters set forth in Section 34177.5(a)(1). Staff has determined, in consultation with its Financial Advisor, that current bond market conditions are favorable for the issuance of refunding bonds to refinance the outstanding 2003 TABs. The attached Debt Service Savings Analysis estimated that based on current market conditions the refinancing of the outstanding 2003 TABs will generate net present value savings of approximately \$18.0 million over the remaining life of the indebtedness. The average annual savings will be approximately \$1.3 million beginning in 2016 with the final maturity of the refunding bonds in September 2032. The term of the refunding bonds is the same as the original term of the currently outstanding indebtedness and will not be extended. Any debt service savings as a result of the refunding will increase the amount of property tax revenues that can be distributed to all the taxing entities.

It is anticipated that the refunding will take approximately 4 months to complete. The key milestones to complete the refunding are identified below:

- Oversight Board and Successor Agency Board’s approval to retain consultants to initiate the refunding of the 2003 TABs (Completed – November 3, 2014 and November 18, 2014)
- Successor Agency approving resolution to refund 2003 TABs and approving legal documents (December 2, 2014)
- Oversight Board’s approval of Successor Agency action to issue the Refunding Bonds and make determination of savings (December 2, 2014)
- Submission of resolutions of both the Successor Agency and Oversight Board and all the related documents to the Department of Finance (December, 2015)
- Secure underlying credit ratings and potentially bond insurance and reserve fund surety (February, 2015)
- Receive Department of Finance’s Approval (February, 2015)
- Successor Agency Approval of the Preliminary Official Statement and remaining financing documents (February, 2015)

- Negotiated sale of Bonds (March, 2015)
- Bond Closing and payoff of outstanding 2003 TABs (April, 2015)

RECOMMENDATION: That the Board adopt a resolution approving the issuance of refunding bonds, making certain determinations with respect to the refunding bonds and providing other matters relating thereto.

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING THE ISSUANCE OF REFUNDING BONDS, MAKING CERTAIN DETERMINATIONS WITH RESPECT TO THE REFUNDING BONDS AND PROVIDING OTHER MATTERS RELATING THERETO**

**WHEREAS**, the Milpitas Redevelopment Agency (the "Former Agency") was a public body, corporate and politic, duly established and authorized to transact business and exercise powers under and pursuant to the provisions of the Community Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the Health and Safety Code of the State (the "Law");

**WHEREAS**, pursuant to Section 34172(a) of the California Health and Safety Code (unless otherwise noted, all Section references hereinafter being to such Code), the Former Agency has been dissolved and no longer exists, and pursuant to Section 34173, the Successor Agency to the Former Milpitas Redevelopment Agency (the "Successor Agency") has become the successor entity to the Former Agency;

**WHEREAS**, pursuant to Section 34179, this Oversight Board has been established for the Successor Agency;

**WHEREAS**, the Oversight Board is informed by the Successor Agency that, prior to dissolution of the Former Agency, the Former Agency issued its Milpitas Redevelopment Agency Redevelopment Project Area No. 1, 2003 Tax Allocation Bonds (the "2003 Bonds"), in the initial principal amount of \$200,000,000, for the purpose of refinancing and financing redevelopment activities of the Former Agency;

**WHEREAS**, Section 34177.5 authorizes the Successor Agency to issue refunding bonds pursuant to Article 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code (the "Refunding Law") for the purpose of achieving debt service savings within the parameters set forth in Section 34177.5(a)(1) (the "Savings Parameters");

**WHEREAS**, to determine compliance with the Savings Parameters for purposes of the issuance by the Successor Agency of its Successor Agency to the Former Milpitas Redevelopment Agency Tax Allocation Refunding Bonds (Redevelopment Project Area No. 1) (the "Refunding Bonds"), the Successor Agency has caused its financial advisor, Fieldman, Rolapp & Associates, Inc. (the "Financial Advisor"), to prepare an analysis of the potential savings that will accrue to the Successor Agency and to applicable taxing entities as a result of the use of the proceeds of the Refunding Bonds to refund the 2003 Bonds (the "Debt Service Savings Analysis");

**WHEREAS**, the Successor Agency will consider adopting, on December 2, 2014, a resolution (the "Successor Agency Resolution") approving the issuance of the Refunding Bonds pursuant to Section 34177.5(a)(1);

**WHEREAS**, the Successor Agency has provided the final version of the Successor Agency Resolution to the Oversight Board;

**WHEREAS**, in the Successor Agency Resolution, the Successor Agency will approve the issuance of the Refunding Bonds and authorize the execution and delivery of the Indenture of Trust, by and between the Successor Agency and U.S. Bank National Association, as trustee, providing for the issuance of the Refunding Bonds (the “Indenture”);

**WHEREAS**, the Successor Agency proposes to sell the Refunding Bonds to one or more municipal underwriting firms to be selected by the Successor Agency, as set forth in the Successor Agency Resolution (collectively, the “Original Purchaser”), pursuant to the terms of the Bond Purchase Agreement (the “Purchase Agreement”) to be entered into by the Successor Agency and the Original Purchaser;

**WHEREAS**, following approval by the Oversight Board of the issuance of the Refunding Bonds by the Successor Agency and upon submission of the Oversight Board Resolution to the California Department of Finance, the Successor Agency will, with the assistance of its disclosure counsel, Jones Hall, A Professional Law Corporation, the Financial Advisor, and its fiscal consultant, Fraser & Associates, cause to be prepared a form of Official Statement for the Refunding Bonds describing the Refunding Bonds and containing material information relating to the Successor Agency and the Refunding Bonds, the preliminary form of which will be submitted to the Successor Agency for approval for distribution by the Original Purchaser, as underwriter of the Refunding Bonds, to persons and institutions interested in purchasing the Refunding Bonds; and

**WHEREAS**, this Oversight Board has completed its review of the refunding proceedings and the Debt Service Savings Analysis and wishes at this time to give its approval to the foregoing;

**NOW THEREFORE, THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1. Recitals.** The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

**Section 2. Determination of Savings.** This Oversight Board has determined that there are significant potential savings available to the Successor Agency and to applicable taxing entities in compliance with the Savings Parameters by the issuance by the Successor Agency of the Refunding Bonds to refund and defease the 2003 Bonds, all as evidenced by the Debt Service Savings Analysis, attached hereto as Exhibit A, which Debt Service Savings Analysis is hereby approved.

**Section 3. Direction and Approval of Issuance of the Bonds.** As authorized by Section 34177.5(f), the Oversight Board hereby directs the Successor Agency to undertake the refunding proceedings, and as authorized by Section 34177.5(f) and Section 34180, this Oversight Board hereby directs and approves the issuance by the Successor Agency of the Refunding Bonds pursuant to Section 34177.5(a)(1) and under other applicable provisions of the Law and the Refunding Law and as provided in the Successor Agency Resolution (attached hereto as Exhibit B) and the Indenture in the aggregate principal amount of not to exceed \$150,000,000, provided that the principal and interest payable with respect to the Refunding Bonds complies in all respects with the requirements of the Savings Parameters with respect thereto, as shall be certified to by the Financial Advisor upon delivery of the Refunding Bonds or any part thereof.

In connection with the sale and issuance of the Refunding Bonds, the Successor Agency is authorized to purchase a municipal bond insurance policy or a reserve account surety bond for the Refunding Bonds if the Successor Agency determines that the purchase of either or both reduces the true interest cost of the Refunding Bonds thereby increasing the savings obtained through the issuance of the Refunding Bonds and the refunding of the 2003 Bonds.

**Section 4. Sale and Delivery of Refunding Bonds in Whole or in Part.** The Oversight Board hereby approves the sale and delivery of the Refunding Bonds in whole, provided that there is compliance with the Savings Parameters. However, if such Savings Parameters cannot be met with respect to the whole of the Refunding Bonds, then the Oversight Board approves the sale and delivery of the Refunding Bonds from time to time in part. In the event the Refunding Bonds are initially sold in part, the Successor Agency is hereby authorized to sell and deliver additional parts of the Refunding Bonds without the prior approval of this Oversight Board provided that in each such instance the Refunding Bonds so sold and delivered in part are in compliance with the Savings Parameters.

**Section 5. Determinations by the Oversight Board.** Based upon the full record before it, which includes but is not limited to staff reports, testimony, and other materials and evidence provided, the Oversight Board makes the following determinations upon which the Successor Agency shall rely in undertaking the refunding proceedings and the issuance of the Refunding Bonds:

(a) The Successor Agency is authorized, as provided in Section 34177.5(f), to recover its costs related to the issuance of the Refunding Bonds from the proceeds of the Refunding Bonds, including the cost of reimbursing its administrative staff for time spent with respect to the authorization, issuance, sale and delivery of the Refunding Bonds, as set forth in Oversight Board Resolution No. 48, approved November 3, 2014;

(b) The application of proceeds of the Refunding Bonds by the Successor Agency to the refunding and defeasance of the 2003 Bonds, as well as the payment by the Successor Agency of costs of issuance of the Refunding Bonds, as provided in Section 34177.5(a), shall be implemented by the Successor Agency promptly upon sale and delivery of the Refunding Bonds, notwithstanding Section 34177.3 or any other provision of law to the contrary, without the approval of the Oversight Board, the California Department of Finance, the Santa Clara County Auditor-Controller or any other person or entity other than the Successor Agency; and

(c) The Successor Agency shall be entitled to receive its full Administrative Cost Allowance under Section 34181(a)(3) without any deductions with respect to continuing costs related to the Refunding Bonds, such as trustee's fees, auditing and fiscal consultant fees and continuing disclosure and rating agency costs (collectively, "Continuing Costs of Issuance"), and such Continuing Costs of Issuance shall be payable from property tax revenues pursuant to Section 34183. In addition and as provided by Section 34177.5(f), if the Successor Agency is unable to complete the issuance of any of the Refunding Bonds for any reason, the Successor Agency shall, nevertheless, be entitled to recover its costs incurred with respect to the refunding proceedings with respect to the Refunding Bonds from such property tax revenues pursuant to Section 34183 without reduction in its Administrative Cost Allowance.

**Section 6. Further Determinations.** Pursuant to Health and Safety Code Section 34177 (h), the Oversight Board further finds and determines, based on information provided,

that: (a) the Successor Agency has made, and will continue to make, diligent efforts to assure that the lowest long-term cost financing is obtained with the Refunding Bonds; (b) the Refunding Bonds will not provide for any bullets or spikes and shall not use variable rates of interest; and (c) the Successor Agency has made, and will continue to make, use of an independent financial advisor in issuing the Refunding Bonds.

**Section 7. Effective Date.** Pursuant to Health and Safety Code Section 34177(f) and Section 34179(h), this Resolution shall be effective five (5) business days after proper notification hereof is given to the California Department of Finance unless the California Department of Finance requests a review of the actions taken in this Resolution, in which case this Resolution will be effective upon approval by the California Department of Finance.

**PASSED AND ADOPTED** this 2nd day of December, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Barbara Crump  
Oversight Board Secretary

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Maribel S. Medina  
Oversight Board Chair

**EXHIBIT A**  
**DEBT SERVICE SAVINGS ANALYSIS REPORT**  
**SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY**

**Bond Refunding Financing Plan**

Refunding of Milpitas RDA 2003 TABs	
<b>Insurance and Reserve Surety</b>	
Refunding Bond Amount	\$131,065,000
Refunded Par Amount	\$145,990,000
Final Maturity	9/1/2032
Average Coupon of Refunding Bonds	4.96%
True Interest Cost	3.06%
Net Present Value Savings	\$18,287,847
Present Value Savings	12.53%
Nominal Savings	\$23,429,286
Average Annual Savings	\$1,301,627

## SOURCES AND USES OF FUNDS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Dated Date 03/25/2015  
 Delivery Date 03/25/2015

## Sources:

Bond Proceeds:	
Par Amount	131,065,000.00
Premium	18,639,076.35
	<u>149,704,076.35</u>

## Uses:

Refunding Escrow Deposits:	
Cash Deposit	146,574,962.93
Excess Transferred Proceeds Penalty	<u>1,285,887.99</u>
	147,860,850.92

Delivery Date Expenses:	
Cost of Issuance	350,000.00
Underwriter's Discount	655,325.00
Reserve Surety @ 180 bps	221,575.50
Bond Insurance at 58 bps	<u>613,260.15</u>
	1,840,160.65

Other Uses of Funds:	
Additional Proceeds	3,064.78
	<u>149,704,076.35</u>

## Notes:

Assumes Successor Agency to the Emeryville Redevelopment Agency 'A+' insured scale as of 7-24-14  
 Assumes a conditional call notice mailed to bondholders day after pricing and a 4-week closing period  
 Assumes all maturities 2024-2032 are insured. For uninsured maturities 2022-2023, assumes Emeryville SA yields in 2022-23 plus 10 basis points  
 Assumes Costs of Issuance of \$350,000  
 Assumes Underwriter's Discount of \$5/Bond  
 Reserve surety assumes 1.80% of Reserve Requirement  
 Assumes bond insurance costs at 58 basis points of total debt service

## SUMMARY OF REFUNDING RESULTS

MILPITAS REDEVELOPMENT AGENCY  
Current Refunding of the 2003 Tax Allocation Bonds  
\*\*\*Current Underlying Rating of 'A/A+'\*\*\*

Dated Date	03/25/2015
Delivery Date	03/25/2015
Arbitrage yield	2.767620%
Escrow yield	
Value of Negative Arbitrage	-1,285,887.99
Bond Par Amount	131,065,000.00
True Interest Cost	3.061767%
Net Interest Cost	3.363668%
Average Coupon	4.961315%
Average Life	8.588
Par amount of refunded bonds	145,990,000.00
Average coupon of refunded bonds	4.934623%
Average life of refunded bonds	8.865
PV of prior debt to 03/25/2015 @ 2.767620%	170,459,398.64
Net PV Savings	18,287,846.97
Percentage savings of refunded bonds	12.526781%
Percentage savings of refunding bonds	13.953265%

## SUMMARY OF BONDS REFUNDED

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Redevelopment Project Area No. 1 2003 Tax Allocation Bonds, 2003TABS:					
SERIAL	09/01/2015	5.000%	6,425,000.00	03/30/2015	100.000
	09/01/2016	5.000%	6,745,000.00	03/30/2015	100.000
	09/01/2017	5.250%	7,080,000.00	03/30/2015	100.000
	09/01/2018	5.250%	7,455,000.00	03/30/2015	100.000
	09/01/2019	5.125%	7,845,000.00	03/30/2015	100.000
	09/01/2020	5.000%	8,245,000.00	03/30/2015	100.000
	09/01/2021	5.250%	8,660,000.00	03/30/2015	100.000
	09/01/2022	5.000%	9,115,000.00	03/30/2015	100.000
	09/01/2023	4.800%	9,570,000.00	03/30/2015	100.000
	09/01/2024	4.625%	10,030,000.00	03/30/2015	100.000
TERM27	09/01/2027	4.900%	33,045,000.00	03/30/2015	100.000
TERM32	09/01/2032	4.950%	31,775,000.00	03/30/2015	100.000
			145,990,000.00		

SAVINGS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 03/25/2015 @ 2.7676199%
09/01/2015	10,055,804.38	10,055,688.33	116.04	114.67
09/01/2016	13,685,358.75	12,307,150.00	1,378,208.75	1,331,274.05
09/01/2017	13,683,108.75	12,307,700.00	1,375,408.75	1,291,605.04
09/01/2018	13,686,408.75	12,307,500.00	1,378,908.75	1,259,069.67
09/01/2019	13,685,021.25	12,309,250.00	1,375,771.25	1,221,830.57
09/01/2020	13,682,965.00	12,304,000.00	1,378,965.00	1,191,175.89
09/01/2021	13,685,715.00	12,306,250.00	1,379,465.00	1,159,070.52
09/01/2022	13,686,065.00	12,309,750.00	1,376,315.00	1,124,721.55
09/01/2023	13,685,315.00	12,308,500.00	1,376,815.00	1,094,380.30
09/01/2024	13,685,955.00	12,306,750.00	1,379,205.00	1,066,406.03
09/01/2025	13,687,067.50	12,308,500.00	1,378,567.50	1,036,959.67
09/01/2026	13,682,812.50	12,302,500.00	1,380,312.50	1,009,926.59
09/01/2027	13,683,567.50	12,308,000.00	1,375,567.50	978,978.47
09/01/2028	8,827,862.50	7,448,250.00	1,379,612.50	955,036.55
09/01/2029	8,828,740.00	7,450,250.00	1,378,490.00	928,150.68
09/01/2030	8,826,797.50	7,446,750.00	1,380,047.50	903,763.64
09/01/2031	4,791,292.50	3,412,250.00	1,379,042.50	878,374.28
09/01/2032	4,790,967.50	3,412,500.00	1,378,467.50	853,944.03
	210,340,824.38	186,911,538.33	23,429,286.04	18,284,782.19

Savings Summary

PV of savings from cash flow	18,284,782.19
Plus: Refunding funds on hand	3,064.78
Net PV Savings	18,287,846.97

SAVINGS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Date	Prior Debt Service	Refunding Debt Service	Savings	Annual Savings	Present Value to 03/25/2015 @ 2.7676199%
09/01/2015	10,055,804.38	10,055,688.33	116.04	116.04	114.67
03/01/2016	3,470,179.38	2,996,075.00	474,104.38		462,096.38
09/01/2016	10,215,179.38	9,311,075.00	904,104.38	1,378,208.75	869,177.67
03/01/2017	3,301,554.38	2,901,350.00	400,204.38		379,492.52
09/01/2017	10,381,554.38	9,406,350.00	975,204.38	1,375,408.75	912,112.52
03/01/2018	3,115,704.38	2,771,250.00	344,454.38		317,772.18
09/01/2018	10,570,704.38	9,536,250.00	1,034,454.38	1,378,908.75	941,297.49
03/01/2019	2,920,010.63	2,602,125.00	317,885.63		285,310.56
09/01/2019	10,765,010.63	9,707,125.00	1,057,885.63	1,375,771.25	936,520.01
03/01/2020	2,718,982.50	2,424,500.00	294,482.50		257,139.76
09/01/2020	10,963,982.50	9,879,500.00	1,084,482.50	1,378,965.00	934,036.13
03/01/2021	2,512,857.50	2,238,125.00	274,732.50		233,390.17
09/01/2021	11,172,857.50	10,068,125.00	1,104,732.50	1,379,465.00	925,680.35
03/01/2022	2,285,532.50	2,042,375.00	243,157.50		200,966.18
09/01/2022	11,400,532.50	10,267,375.00	1,133,157.50	1,376,315.00	923,755.37
03/01/2023	2,057,657.50	1,836,750.00	220,907.50		177,626.82
09/01/2023	11,627,657.50	10,471,750.00	1,155,907.50	1,376,815.00	916,753.47
03/01/2024	1,827,977.50	1,620,875.00	207,102.50		162,011.64
09/01/2024	11,857,977.50	10,685,875.00	1,172,102.50	1,379,205.00	904,394.39
03/01/2025	1,596,033.75	1,394,250.00	201,783.75		153,571.23
09/01/2025	12,091,033.75	10,914,250.00	1,176,783.75	1,378,567.50	883,388.45
03/01/2026	1,338,906.25	1,156,250.00	182,656.25		135,244.93
09/01/2026	12,343,906.25	11,146,250.00	1,197,656.25	1,380,312.50	874,681.66
03/01/2027	1,069,283.75	906,500.00	162,783.75		117,262.80
09/01/2027	12,614,283.75	11,401,500.00	1,212,783.75	1,375,567.50	861,715.67
03/01/2028	786,431.25	644,125.00	142,306.25		99,732.34
09/01/2028	8,041,431.25	6,804,125.00	1,237,306.25	1,379,612.50	855,304.22
03/01/2029	606,870.00	490,125.00	116,745.00		79,600.00
09/01/2029	8,221,870.00	6,960,125.00	1,261,745.00	1,378,490.00	848,550.67
03/01/2030	418,398.75	328,375.00	90,023.75		59,716.55
09/01/2030	8,408,398.75	7,118,375.00	1,290,023.75	1,380,047.50	844,047.10
03/01/2031	220,646.25	158,625.00	62,021.25		40,025.88
09/01/2031	4,570,646.25	3,253,625.00	1,317,021.25	1,379,042.50	838,348.40
03/01/2032	112,983.75	81,250.00	31,733.75		19,924.37
09/01/2032	4,677,983.75	3,331,250.00	1,346,733.75	1,378,467.50	834,019.66
	210,340,824.38	186,911,538.33	23,429,286.04	23,429,286.04	18,284,782.19

Savings Summary

PV of savings from cash flow	18,284,782.19
Plus: Refunding funds on hand	3,064.78
Net PV Savings	18,287,846.97

SAVINGS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Date	Prior Debt Service	Refunding Debt Service	Savings	Annual Savings	Present Value to 03/25/2015 @ 2.7676199%
09/01/2015	10,055,804.38	10,055,688.33	116.04	116.04	114.67
03/01/2016	3,470,179.38	2,996,075.00	474,104.38		462,096.38
09/01/2016	10,215,179.38	9,311,075.00	904,104.38	1,378,208.75	869,177.67
03/01/2017	3,301,554.38	2,901,350.00	400,204.38		379,492.52
09/01/2017	10,381,554.38	9,406,350.00	975,204.38	1,375,408.75	912,112.52
03/01/2018	3,115,704.38	2,771,250.00	344,454.38		317,772.18
09/01/2018	10,570,704.38	9,536,250.00	1,034,454.38	1,378,908.75	941,297.49
03/01/2019	2,920,010.63	2,602,125.00	317,885.63		285,310.56
09/01/2019	10,765,010.63	9,707,125.00	1,057,885.63	1,375,771.25	936,520.01
03/01/2020	2,718,982.50	2,424,500.00	294,482.50		257,139.76
09/01/2020	10,963,982.50	9,879,500.00	1,084,482.50	1,378,965.00	934,036.13
03/01/2021	2,512,857.50	2,238,125.00	274,732.50		233,390.17
09/01/2021	11,172,857.50	10,068,125.00	1,104,732.50	1,379,465.00	925,680.35
03/01/2022	2,285,532.50	2,042,375.00	243,157.50		200,966.18
09/01/2022	11,400,532.50	10,267,375.00	1,133,157.50	1,376,315.00	923,755.37
03/01/2023	2,057,657.50	1,836,750.00	220,907.50		177,626.82
09/01/2023	11,627,657.50	10,471,750.00	1,155,907.50	1,376,815.00	916,753.47
03/01/2024	1,827,977.50	1,620,875.00	207,102.50		162,011.64
09/01/2024	11,857,977.50	10,685,875.00	1,172,102.50	1,379,205.00	904,394.39
03/01/2025	1,596,033.75	1,394,250.00	201,783.75		153,571.23
09/01/2025	12,091,033.75	10,914,250.00	1,176,783.75	1,378,567.50	883,388.45
03/01/2026	1,338,906.25	1,156,250.00	182,656.25		135,244.93
09/01/2026	12,343,906.25	11,146,250.00	1,197,656.25	1,380,312.50	874,681.66
03/01/2027	1,069,283.75	906,500.00	162,783.75		117,262.80
09/01/2027	12,614,283.75	11,401,500.00	1,212,783.75	1,375,567.50	861,715.67
03/01/2028	786,431.25	644,125.00	142,306.25		99,732.34
09/01/2028	8,041,431.25	6,804,125.00	1,237,306.25	1,379,612.50	855,304.22
03/01/2029	606,870.00	490,125.00	116,745.00		79,600.00
09/01/2029	8,221,870.00	6,960,125.00	1,261,745.00	1,378,490.00	848,550.67
03/01/2030	418,398.75	328,375.00	90,023.75		59,716.55
09/01/2030	8,408,398.75	7,118,375.00	1,290,023.75	1,380,047.50	844,047.10
03/01/2031	220,646.25	158,625.00	62,021.25		40,025.88
09/01/2031	4,570,646.25	3,253,625.00	1,317,021.25	1,379,042.50	838,348.40
03/01/2032	112,983.75	81,250.00	31,733.75		19,924.37
09/01/2032	4,677,983.75	3,331,250.00	1,346,733.75	1,378,467.50	834,019.66
	210,340,824.38	186,911,538.33	23,429,286.04	23,429,286.04	18,284,782.19

Savings Summary

PV of savings from cash flow	18,284,782.19
Plus: Refunding funds on hand	3,064.78
Net PV Savings	18,287,846.97

BOND SUMMARY STATISTICS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+'\*\*\*

Dated Date	03/25/2015
Delivery Date	03/25/2015
Last Maturity	09/01/2032
Arbitrage Yield	2.767620%
True Interest Cost (TIC)	3.061767%
Net Interest Cost (NIC)	3.363668%
All-In TIC	3.175659%
Average Coupon	4.961315%
Average Life (years)	8.588
Duration of Issue (years)	7.129
Par Amount	131,065,000.00
Bond Proceeds	149,704,076.35
Total Interest	55,846,538.33
Net Interest	37,862,786.98
Total Debt Service	186,911,538.33
Maximum Annual Debt Service	12,309,750.00
Average Annual Debt Service	10,721,503.15
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	5.000000
Total Underwriter's Discount	5.000000
Bid Price	113.721246

Bond Component	Par Value	Price	Average Coupon	Average Life
Uninsured Serial Bonds	66,230,000.00	112.827	4.858%	4.645
Insured Serial Bonds	64,835,000.00	115.646	5.000%	12.616
	131,065,000.00			8.588

	TIC	All-In TIC	Arbitrage Yield
Par Value	131,065,000.00	131,065,000.00	131,065,000.00
+ Accrued Interest			
+ Premium (Discount)	18,639,076.35	18,639,076.35	18,639,076.35
- Underwriter's Discount	-655,325.00	-655,325.00	
- Cost of Issuance Expense		-350,000.00	
- Other Amounts		-834,835.65	-834,835.65
Target Value	149,048,751.35	147,863,915.70	148,869,240.70
Target Date	03/25/2015	03/25/2015	03/25/2015
Yield	3.061767%	3.175659%	2.767620%

BOND PRICING

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Yield to Maturity
Uninsured Serial Bonds:						
	09/01/2015	7,395,000	2.000%	0.190%	100.783	
	09/01/2016	6,315,000	3.000%	0.460%	103.624	
	09/01/2017	6,505,000	4.000%	0.700%	107.947	
	09/01/2018	6,765,000	5.000%	1.050%	113.285	
	09/01/2019	7,105,000	5.000%	1.430%	115.281	
	09/01/2020	7,455,000	5.000%	1.760%	116.717	
	09/01/2021	7,830,000	5.000%	2.050%	117.693	
	09/01/2022	8,225,000	5.000%	2.360%	117.900	
	09/01/2023	8,635,000	5.000%	2.540%	118.567	
		<u>66,230,000</u>				
Insured Serial Bonds:						
	09/01/2024	9,065,000	5.000%	2.620%	119.776	
	09/01/2025	9,520,000	5.000%	2.820%	117.944 C	2.985%
	09/01/2026	9,990,000	5.000%	2.970%	116.592 C	3.251%
	09/01/2027	10,495,000	5.000%	3.150%	114.994 C	3.502%
	09/01/2028	6,160,000	5.000%	3.230%	114.292 C	3.645%
	09/01/2029	6,470,000	5.000%	3.310%	113.595 C	3.770%
	09/01/2030	6,790,000	5.000%	3.360%	113.162 C	3.860%
	09/01/2031	3,095,000	5.000%	3.420%	112.645 C	3.947%
	09/01/2032	3,250,000	5.000%	3.580%	111.280 C	4.089%
		<u>64,835,000</u>				
		131,065,000				

Dated Date	03/25/2015	
Delivery Date	03/25/2015	
First Coupon	09/01/2015	
Par Amount	131,065,000.00	
Premium	18,639,076.35	
Production	149,704,076.35	114.221246%
Underwriter's Discount	-655,325.00	-0.500000%
Purchase Price	149,048,751.35	113.721246%
Accrued Interest		
Net Proceeds	149,048,751.35	

BOND DEBT SERVICE

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Period Ending	Principal	Coupon	Interest	Debt Service
09/01/2015	7,395,000	2.000%	2,660,688.33	10,055,688.33
09/01/2016	6,315,000	3.000%	5,992,150.00	12,307,150.00
09/01/2017	6,505,000	4.000%	5,802,700.00	12,307,700.00
09/01/2018	6,765,000	5.000%	5,542,500.00	12,307,500.00
09/01/2019	7,105,000	5.000%	5,204,250.00	12,309,250.00
09/01/2020	7,455,000	5.000%	4,849,000.00	12,304,000.00
09/01/2021	7,830,000	5.000%	4,476,250.00	12,306,250.00
09/01/2022	8,225,000	5.000%	4,084,750.00	12,309,750.00
09/01/2023	8,635,000	5.000%	3,673,500.00	12,308,500.00
09/01/2024	9,065,000	5.000%	3,241,750.00	12,306,750.00
09/01/2025	9,520,000	5.000%	2,788,500.00	12,308,500.00
09/01/2026	9,990,000	5.000%	2,312,500.00	12,302,500.00
09/01/2027	10,495,000	5.000%	1,813,000.00	12,308,000.00
09/01/2028	6,160,000	5.000%	1,288,250.00	7,448,250.00
09/01/2029	6,470,000	5.000%	980,250.00	7,450,250.00
09/01/2030	6,790,000	5.000%	656,750.00	7,446,750.00
09/01/2031	3,095,000	5.000%	317,250.00	3,412,250.00
09/01/2032	3,250,000	5.000%	162,500.00	3,412,500.00
	131,065,000		55,846,538.33	186,911,538.33

BOND DEBT SERVICE

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+'\*\*\*

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
09/01/2015	7,395,000	2.000%	2,660,688.33	10,055,688.33	10,055,688.33
03/01/2016			2,996,075.00	2,996,075.00	
09/01/2016	6,315,000	3.000%	2,996,075.00	9,311,075.00	12,307,150.00
03/01/2017			2,901,350.00	2,901,350.00	
09/01/2017	6,505,000	4.000%	2,901,350.00	9,406,350.00	12,307,700.00
03/01/2018			2,771,250.00	2,771,250.00	
09/01/2018	6,765,000	5.000%	2,771,250.00	9,536,250.00	12,307,500.00
03/01/2019			2,602,125.00	2,602,125.00	
09/01/2019	7,105,000	5.000%	2,602,125.00	9,707,125.00	12,309,250.00
03/01/2020			2,424,500.00	2,424,500.00	
09/01/2020	7,455,000	5.000%	2,424,500.00	9,879,500.00	12,304,000.00
03/01/2021			2,238,125.00	2,238,125.00	
09/01/2021	7,830,000	5.000%	2,238,125.00	10,068,125.00	12,306,250.00
03/01/2022			2,042,375.00	2,042,375.00	
09/01/2022	8,225,000	5.000%	2,042,375.00	10,267,375.00	12,309,750.00
03/01/2023			1,836,750.00	1,836,750.00	
09/01/2023	8,635,000	5.000%	1,836,750.00	10,471,750.00	12,308,500.00
03/01/2024			1,620,875.00	1,620,875.00	
09/01/2024	9,065,000	5.000%	1,620,875.00	10,685,875.00	12,306,750.00
03/01/2025			1,394,250.00	1,394,250.00	
09/01/2025	9,520,000	5.000%	1,394,250.00	10,914,250.00	12,308,500.00
03/01/2026			1,156,250.00	1,156,250.00	
09/01/2026	9,990,000	5.000%	1,156,250.00	11,146,250.00	12,302,500.00
03/01/2027			906,500.00	906,500.00	
09/01/2027	10,495,000	5.000%	906,500.00	11,401,500.00	12,308,000.00
03/01/2028			644,125.00	644,125.00	
09/01/2028	6,160,000	5.000%	644,125.00	6,804,125.00	7,448,250.00
03/01/2029			490,125.00	490,125.00	
09/01/2029	6,470,000	5.000%	490,125.00	6,960,125.00	7,450,250.00
03/01/2030			328,375.00	328,375.00	
09/01/2030	6,790,000	5.000%	328,375.00	7,118,375.00	7,446,750.00
03/01/2031			158,625.00	158,625.00	
09/01/2031	3,095,000	5.000%	158,625.00	3,253,625.00	3,412,250.00
03/01/2032			81,250.00	81,250.00	
09/01/2032	3,250,000	5.000%	81,250.00	3,331,250.00	3,412,500.00
	131,065,000		55,846,538.33	186,911,538.33	186,911,538.33

ESCROW REQUIREMENTS

MILPITAS REDEVELOPMENT AGENCY  
Current Refunding of the 2003 Tax Allocation Bonds  
\*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Period Ending	Interest	Principal Redeemed	Total
03/30/2015	584,962.93	145,990,000.00	146,574,962.93
	584,962.93	145,990,000.00	146,574,962.93

## ESCROW COST

MILPITAS REDEVELOPMENT AGENCY  
Current Refunding of the 2003 Tax Allocation Bonds  
\*\*\*Current Underlying Rating of 'A/A+'\*\*\*

Purchase Date	Cost of Securities	Cash Deposit	Total Escrow Cost
03/25/2015		146,574,962.93	146,574,962.93
	0	146,574,962.93	146,574,962.93

ESCROW SUFFICIENCY

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Date	Escrow Requirement	Net Escrow Receipts	Excess Receipts	Excess Balance
03/25/2015		146,574,962.93	146,574,962.93	146,574,962.93
03/30/2015	146,574,962.93		-146,574,962.93	0.00
	146,574,962.93	146,574,962.93	0.00	

ESCROW STATISTICS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Total Escrow Cost	Modified Duration (years)	Yield to Receipt Date	Yield to Disbursement Date	Perfect Escrow Cost	Value of Negative Arbitrage	Cost of Dead Time
Global Proceeds Escrow:						
146,574,962.93				147,804,905.68	-1,285,887.99	55,945.24
146,574,962.93				147,804,905.68	-1,285,887.99	55,945.24

Delivery date 03/25/2015  
 Arbitrage yield 2.767620%

TRANSFERRED PROCEEDS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Prior Bonds (PRIOR)

Date	Prior Principal Paid by Bond Proceeds	Prior Principal Value	Transfer Factor	Adjusted Difference	PV of Diff. to 03/25/2015 @ 2.767620%
03/30/2015	145,834,866.14	145,834,866.14	100.000000%	1,286,378.98	-1,285,887.99
	145,834,866.14				-1,285,887.99

TRANSFERRED PROCEEDS PRINCIPAL DEFEASANCE

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Prior Bonds (PRIOR)

Date	Escrow Requirement	Prior Principal Defeasance	Paid by Bond Proceeds
03/30/2015	146,574,962.93	145,834,866.14	145,834,866.14
	146,574,962.93	145,834,866.14	145,834,866.14

TRANSFERRED ESCROWS

MILPITAS REDEVELOPMENT AGENCY  
 Current Refunding of the 2003 Tax Allocation Bonds  
 \*\*\*Current Underlying Rating of 'A/A+' \*\*\*

Prior Bonds (PRIOR) - Refund Escrow (REF)

Date	Prior Escrow Receipts Subject to Transfer	PV of Prior Escrow @ Escrow Yield of 4.401990%	PV of Prior Escrow @ Refund Yield of 2.767620%	Difference	Transfer Factor	Cumulative Transfer Factor	Percent of Escrow to Transfer	Adjusted Difference
03/30/2015		15,789,317.75	17,075,696.72	1,286,378.98	100.000000%	100.000000%	100.000000%	1,286,378.98
07/15/2015	31,107.00							
01/15/2016	1,751,817.00							
07/15/2016	26,457.00							
01/15/2017	1,842,078.00							
07/15/2017	22,374.00							
01/15/2018	1,932,913.00							
07/15/2018	17,937.00							
01/15/2019	2,033,379.00							
07/15/2019	14,003.00							
01/15/2020	2,139,356.00							
07/15/2020	10,578.00							
01/15/2021	2,255,849.00							
07/15/2021	7,650.00							
01/15/2022	2,372,849.00							
07/15/2022	5,098.00							
01/15/2023	2,500,233.00							
07/15/2023	2,626.00							
01/15/2024	2,637,695.00							
	19,603,999.00							

## EXHIBIT B

### RESOLUTION NO. 2015-\_\_\_\_\_

#### **A RESOLUTION OF THE BOARD OF THE SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING THE ISSUANCE OF REFUNDING BONDS IN ORDER TO REFUND CERTAIN OUTSTANDING BONDS OF THE FORMER MILPITAS REDEVELOPMENT AGENCY, APPROVING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST RELATING THERETO, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO**

**WHEREAS**, pursuant to Section 34172(a) of the California Health and Safety Code (unless otherwise noted, all Section references hereinafter being to such Code), the Milpitas Redevelopment Agency (the "Former Agency") has been dissolved and no longer exists as a public body, corporate and politic, and pursuant to Section 34173, the Successor Agency to the Former Milpitas Redevelopment Agency (the "Successor Agency") has become the successor entity to the Former Agency;

**WHEREAS**, prior to dissolution of the Former Agency, the Former Agency issued its Milpitas Redevelopment Agency Redevelopment Project Area No. 1, 2003 Tax Allocation Bonds (the "2003 Bonds"), in the initial principal amount of \$200,000,000, for the purpose of refinancing and financing redevelopment activities of the Former Agency;

**WHEREAS**, Section 34177.5 authorizes the Successor Agency to issue refunding bonds pursuant to Article 11 (commencing with Section 53580) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code (the "Refunding Law") for the purpose of achieving debt service savings within the parameters set forth in Section 34177.5(a)(1) (the "Savings Parameters");

**WHEREAS**, to determine compliance with the Savings Parameters for purposes of the issuance by the Successor Agency of its Successor Agency to the Former Milpitas Redevelopment Agency Tax Allocation Refunding Bonds (Redevelopment Project Area No. 1) (the "Refunding Bonds"), the Successor Agency has caused its financial advisor, Fieldman, Rolapp & Associates, Inc. (the "Financial Advisor"), to prepare an analysis of the potential savings that will accrue to the Successor Agency and to applicable taxing entities as a result of the use of the proceeds of the Refunding Bonds to refund the 2003 Bonds (the "Debt Service Savings Analysis");

**WHEREAS**, the Successor Agency desires at this time to approve the issuance of the Refunding Bonds and to approve the form of and authorize the execution and delivery of the Indenture of Trust, by and between the Successor Agency and U.S. Bank National Association, as trustee, providing for the issuance of the Refunding Bonds (the "Indenture"), the Irrevocable Refunding Instructions to be delivered to U.S. Bank National Association, as trustee of the 2003 Bonds, to be dated as of the date of the issuance and delivery of the Refunding Bonds (the "2003 Refunding Instructions") ;

**WHEREAS**, pursuant to Section 34179, an oversight board (the "Oversight Board") has been established for the Successor Agency;

**WHEREAS**, the Oversight Board has heretofore approved the issuance of the Refunding Bonds and the other actions of the Successor Agency that are set forth in and contemplated by this Resolution;

**WHEREAS**, the Successor Agency has determined to sell the Refunding Bonds to one or more municipal underwriting firms to be selected by the Successor Agency, as provided below (collectively, the “Original Purchaser”), pursuant to the terms of the Bond Purchase Agreement (the “Purchase Agreement”) to be entered into by the Successor Agency and the Original Purchaser;

**WHEREAS**, following approval by the Oversight Board of the issuance of the Refunding Bonds by the Successor Agency and upon submission of this Resolution and the Oversight Board Resolution to the California Department of Finance, the Successor Agency will, with the assistance of its disclosure counsel, Jones Hall, A Professional Law Corporation (the “Disclosure Counsel”), the Financial Advisor and its fiscal consultant, Fraser & Associates (the “Fiscal Consultant”), cause to be prepared a form of Official Statement for the Refunding Bonds describing the Refunding Bonds and containing material information relating to the Successor Agency and the Refunding Bonds, the preliminary form of which will be submitted to the Successor Agency for approval for distribution by the Original Purchaser, as underwriter of the Refunding Bonds, to persons and institutions interested in purchasing the Refunding Bonds;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of the Successor Agency to the Former Milpitas Redevelopment Agency, as follows:

1. Determination of Savings. The Successor Agency has determined that there are significant potential savings available to the Successor Agency and to applicable taxing entities in compliance with the Savings Parameters by the issuance by the Successor Agency of the Refunding Bonds to provide funds to refund and defease the 2003 Bonds, all as evidenced by the Debt Service Savings Analysis on file with the Successor Agency and attached hereto as Exhibit A, which Debt Service Savings Analysis is hereby approved.

2. Approval of Issuance of the Refunding Bonds. The Successor Agency hereby authorizes and approves the issuance of the Refunding Bonds under the Law and the Refunding Law in the aggregate principal amount of not to exceed \$150,000,000, provided that the Refunding Bonds are in compliance with the Savings Parameters at the time of sale and delivery.

3. Approval of Indenture. The Successor Agency hereby approves the Indenture prescribing the terms and provisions of the Refunding Bonds and the application of the proceeds of the Refunding Bonds. Each of the Chair, the Executive Director or the Assistant Executive Director of the Successor Agency (each, an “Authorized Officer”), is hereby authorized and directed to execute and deliver, and the Successor Agency Secretary is hereby authorized and directed to attest to, the Indenture for and in the name and on behalf of the Successor Agency, in substantially the form on file with the Successor Agency, with such changes therein, deletions therefrom and additions thereto as the Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by the execution and delivery of the Indenture. The Successor Agency hereby authorizes the delivery and performance of the Indenture.

4. Approval of Refunding Instructions. The form of the 2003 Refunding Instructions on file with the Successor Agency are hereby approved and the Authorized Officers are, each acting alone, hereby authorized and directed, for and in the name and on behalf of the Successor Agency, to execute and deliver the 2003 Refunding Instructions. The Successor Agency hereby authorizes the delivery and performance of its obligations under the 2003 Refunding Instructions.

5. Filing of Debt Service Savings Analysis and Resolution. The Successor Agency has heretofore provided the Debt Service Savings analysis to the Oversight Board, and is hereby directed to provide a final copy of this Resolution to the Oversight Board. The Successor Agency is hereby further authorized and directed to file the Debt Service Savings Analysis, together with a certified copy of this Resolution, as provided in Section 34180(j), with the Santa Clara County Administrative Officer, the Santa Clara County Auditor-Controller and the California Department of Finance.

6. Sale of Refunding Bonds. The Successor Agency authorizes and directs the Authorized Officers, upon consultation with the Financial Advisor, to select one or more municipal underwriting firms to serve as the Original Purchaser of the Refunding Bonds.

The Successor Agency hereby approves the Purchase Agreement to be entered into with the Original Purchaser. The Authorized Officers, each acting alone, are hereby authorized and directed to execute and deliver the Purchase Agreement for and in the name and on behalf of the Successor Agency, in substantially the form on file with the Successor Agency, with such changes therein, deletions therefrom and additions thereto as the Authorized Officer executing the same shall approve, such approval to be conclusively evidenced by the execution and delivery of the Purchase Agreement.

7. Issuance of Refunding Bonds in Whole or in Part. It is the intent of the Successor Agency to sell and deliver the Refunding Bonds in whole, provided that there is compliance with the Savings Parameters. However, the Successor Agency will initially authorize the sale and delivery of the Refunding Bonds in whole or, if such Savings Parameters cannot be met with respect to the whole, then in part; provided that the Refunding Bonds so sold and delivered in part are in compliance with the Savings Parameters. The sale and delivery of the Refunding Bonds in part will in each instance provide sufficient funds only for the refunding of that portion of the 2003 Bonds that meet the Savings Parameters. In the event the Refunding Bonds are initially sold in part, the Successor Agency intends to sell and deliver additional parts of the Refunding Bonds without the further approval of the Successor Agency or the Oversight Board, provided that in each such instance the Refunding Bonds so sold and delivered in part are in compliance with the Savings Parameters.

8. Municipal Bond Insurance and Surety Bonds. The Authorized Officers, each acting alone, are hereby authorized and directed to take all actions necessary to obtain a municipal bond insurance policy for the Refunding Bonds and reserve account surety bonds for the Refunding Bonds from a municipal bond insurance company if it is determined, upon consultation with the Financial Advisor and the Original Purchaser, that such municipal bond insurance policy and/or surety bonds will reduce the true interest costs with respect to the Refunding Bonds.

9. Approval of Official Statement. Following approval by the Oversight Board of the issuance of the Refunding Bonds by the Successor Agency and upon submission of the Oversight Board Resolution to the California Department of Finance, the Successor Agency will, with the assistance of its Disclosure Counsel, Fiscal Consultant and Financial Advisor, cause to be prepared a form of Official Statement for the Refunding Bonds describing the Refunding Bonds and containing material information relating to the Successor Agency and the Refunding Bonds, the preliminary form of which will be submitted to the Successor Agency for approval for distribution by the Original Purchaser to persons and institutions interested in purchasing the Refunding Bonds.

10. Official Actions. The Authorized Officers and any and all other officers of the Successor Agency are hereby authorized and directed, for and in the name and on behalf of the Successor Agency, to do any and all things and take any and all actions, which they, or any of them, may deem necessary or advisable in obtaining the requested approval by the California Department of Finance, and in the issuance, sale and delivery of the Refunding Bonds. Whenever in this Resolution any officer of the Successor Agency is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

11. Effective Date. This Resolution shall take effect from and after the date of approval and adoption thereof.

PASSED AND ADOPTED this 2nd day of December, 2014, by the following vote:

AYES:

NOES:

ABSENT:

Attest:

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Successor Agency Chair

---

Successor Agency Secretary

Approved As To Form:

---

Successor Agency General Counsel

## **OVERSIGHT BOARD STAFF REPORT**

**MEETING DATE:** December 2, 2014

### **ITEM VI.A: APPROVE PROCUREMENT PROCESS AND AUTHORIZE THE OVERSIGHT BOARD CHAIR TO NEGOTIATE A CONTRACT WITH NEW OVERSIGHT BOARD COUNSEL**

#### **RECOMMENDED ACTION(S):**

Piggy-back off the San Jose Oversight Board's recently completed Request for Qualifications (RFQ) process for selecting new Oversight Board Counsel and Authorize the Oversight Board Chair to negotiate a contract with new legal counsel for the Oversight Board.

#### **BACKGROUND:**

Since October 2012, the Milpitas Oversight Board has received legal services from Miller & Owen, A Professional Corporation (Miller & Owen). Effective January 1, 2015, Miller & Owen will be merging with another public agency law firm, Renne Sloan Holtzman Sakai, LLP (RSHS). RSHS provides ongoing legal services to the City of Milpitas. In light of this, on November 10, 2014, RSHS requested that the City approve a conflict waiver, which would allow Jennifer Gore to continue to provide services to the Oversight Board after the completion of the merger. On November 24, 2014, Miller & Owen notified the Oversight Board Chair that the City has decided not to approve the requested waiver.

In light of this, staff recommends that the Oversight Board select new Oversight Board counsel.

#### **DISCUSSION:**

The Milpitas Oversight Board Chair also serves as an alternate on the San Jose Oversight Board, which recently completed an RFQ process to select new legal counsel in June 2014. Given the recent completion of this process, staff recommends that the Oversight Board piggy-back on the procurement process utilized in that jurisdiction.

The RFQ released by the San Jose Oversight Board and the June staff report recommending the selection of counsel are attached for your review. The staff report reflects that the San Jose Oversight Board received three responses to the RFQ from the following firms: (a) Alvarez-Glasman & Colvin; (b) Blackwell, Santaella & Jahangiri, LLP; and (c) Montoy Law Corporation. On June 26<sup>th</sup>, the San Jose Oversight Board approved the selection panel's recommendation to enter into an agreement with the Montoy Law Corporation for legal services.

To allow for the appointment of new counsel prior to January 1<sup>st</sup>, the Oversight Board may want to either appoint a subcommittee or delegate authority to the Board Chair to select legal counsel and negotiate a contract.

In either case, staff recommends that the Oversight Board authorize the execution of a contract with a term of January 1, 2015, through June 30, 2016, similar to the term remaining on the current contract with Miller & Owen.

In addition to designating an eighteen month term, staff recommends that the Oversight Board establish parameters for the not-to-exceed amount for the contract. The current six-month budget for Oversight Board legal services in the administrative budget is \$20,000. Given the suggested eighteen month term of the contract, staff recommends that the Oversight Board delegate authority to the Subcommittee or Chair to negotiate a not-to-exceed amount between \$60,000 and \$80,000, to account for the higher hourly billing rates.

#### **ATTACHMENT(S):**

San Jose Oversight Board RFQ and Staff Report

Prepared by: Jennifer Gore  
Oversight Board Legal Counsel  
Milpitas Oversight Board Meeting Materials



*Successor Agency to the Redevelopment Agency*

# REQUEST FOR QUALIFICATIONS

RFQ Number: # 13-14 SARA-02

**RFQ NAME:**

**REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD  
CONFLICTS COUNSEL**

<b>RFQ release date:</b>	May 15, 2014
<b>Contact name:</b>	Ms. Patricia Deignan Office of the City Attorney City of San Jose 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
<b>E-mail address:</b>	<a href="mailto:patricia.deignan@sanjoseca.gov">patricia.deignan@sanjoseca.gov</a>
<b>Deadline for questions and objections:</b>	May 30, 2014, 1:00 PM (Pacific)
<b>RFQ due date:</b>	June 9, 2014
<b>Received by:</b>	3:00 PM (Pacific)
<b>Location:</b>	<a href="mailto:patricia.deignan@sanjoseca.gov">patricia.deignan@sanjoseca.gov</a>

## **Request for Qualifications Oversight Board Legal Counsel**

### **GENERAL INFORMATION**

Pursuant to ABX1 26, found at California Health and Safety Code Sections 34161 et. seq., as of February 1, 2012, the Redevelopment Agency of the City of San Jose ("Agency") has been dissolved by operation of law, and the City of San Jose, as successor to the former Agency ("Successor Agency"), is required by law to wind down the affairs of the former Agency. The purpose of the new law is to allocate the tax revenues otherwise used to finance redevelopment activities to other taxing entities, such as cities, counties, school districts and special districts, after the obligations of the former redevelopment agency have been satisfied.

The former Agency had been active for fifty-six years and currently has assets consisting of real estate, accounts receivable, and personal property that the Successor Agency is charged with disposing. The Successor Agency is required to continue to pay enforceable obligations, as that term is defined in the law, and perform such other obligations as required of the former Agency by law or contract. Finally, the Successor Agency is required to enforce the rights of the former Agency for the benefit of the taxing entities, including collection of revenues that were due to the former Agency.

Certain actions of the Successor Agency are reviewed by an Oversight Board, made up of individuals appointed as designated in the law (Health and Safety Code Section 34179). The Oversight Board is deemed a local agency for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. The Successor Agency provides staff for the Oversight Board. The Oversight Board for the San Jose Successor Agency meets on the first Thursday of each month in the Council Chambers at San Jose City Hall located at 200 East Santa Clara Street, San Jose.

The Successor Agency is seeking a firm with expertise to provide legal services to the Oversight Board of the Successor Agency to the Redevelopment Agency. Although the City Attorney's Office provides day to day transactional services and advice to the Successor Agency and the Oversight Board, pursuant to Section 700 of the Rules of Conduct adopted by the Oversight Board on April 12, 2012, the Oversight Board "shall consult with Outside Counsel from time to time: (i) upon a request to consult with Outside Counsel by any member and the affirmative vote of four members of the Board, or (ii) whenever the interests of the Successor Agency and the Board actually conflict, as that term is used by Rule 3-310 of the California Rules of Professional Conduct."

Legal services may include but are not limited to: advice, consultation, legal research, negotiations, meetings and opinions regarding the dissolution activities of the Successor Agency and any actions or documents relating thereto. Legal services may also include litigation and consultation and advice related to litigation.

For purposes of determining potential conflicts, the Oversight Board for the San Jose Successor Agency currently consists of:

Appointed by City of San Jose:

- Chuck Reed, Mayor, City of San Jose
- Abe Andrade, Successor Agency Employee

Appointed by County of Santa Clara:

- John Guthrie
- David Snow, County of Santa Clara Employee

Appointed by Santa Clara Valley Water District:

- Tony Estremera, Santa Clara Valley Water District Director

Appointed by Chancellor of California Community Colleges:

- Ed Maduli, Vice Chancellor

Appointed by the Santa Clara County Office of Education:

- Micaela Ochoa, Chief Business Officer

The regular meetings of the San Jose Successor Agency Oversight Board are held on the second Thursday of the month at 9:00 a.m. at San Jose City Hall. The Oversight Board has also been holding special meetings on the fourth Thursday of each month, at the same time and place. It is anticipated that the need for these special meetings will diminish in the future. Please note however, that conflicts counsel will not be required to be in attendance at every meeting.

## I. STATEMENT OF QUALIFICATION REQUIREMENTS

The Statement of Qualifications ("SOQ") submitted in response to this Request for Qualifications ("RFQ") must be no more than **6 pages** (excluding attachments and appendices) using a typeface font of no less than **12 pitch**. Appendices and attachments **are not required** to use a typeface font of at least 12 pitch. Please take care that all attachments and appendices are readable.

The SOQ must address each of the questions listed in Section III below in the order specified. The attachment of a firm resume in lieu of responding to one or more of the questions set forth in Section III is not recommended.

Each SOQ will be reviewed to determine if all required documentation and information was included with the submittal and if the respondent has met the minimum qualifications specified in Section II. If a respondent fails to provide the required documentation and

information or fails to meet the minimum qualifications, the SOQ may be deemed non-responsive. A non-responsive SOQ will be eliminated from further consideration.

***SOQs must be sent via email addressed to [patricia.deignan@sanjoseca.gov](mailto:patricia.deignan@sanjoseca.gov) and received no later than 3:00 p.m. (Pacific Time) on June 9, 2014. Late submissions will not be considered.*** Please use PDF (portable document format) for the submission of your SOQs. Respondents should not include any executable or zip files in or with their SOQs.

***Please take note that the deadline for submitting inquiries or requests for clarifications is 1:00 p.m. (Pacific Time) on May 30, 2014. We will not respond to inquiries or requests for clarifications submitted after the deadline. Please see Section V.A. below for the instructions on submitting inquiries or requests for clarifications.***

## **II. MINIMUM QUALIFICATIONS**

### **A. California Bar Membership**

All attorneys of the firm who provide services to the Successor Agency must be members in good standing of the State Bar of California.

### **B. Experience in Applicable Areas of Law**

The selected firm, or the attorneys of the firm who will provide services to the Oversight Board of the Successor Agency to the Redevelopment Agency, must have at least five years of experience in two or more of the following areas, one (1) of which must be litigation:

1. Corporate Dissolution
2. California Redevelopment Law
3. Commercial Real Estate
4. Municipal Finance
5. Complex Litigation in any of the above areas

## **III. STATEMENT OF QUALIFICATION QUESTIONS**

Please address each of the following questions:

### **A. Minimum Qualifications**

Please state whether your firm meets the minimum qualifications specified in Section II.

### **B. Individual or Firm Experience**

1. Briefly describe your firm's practice and provide a short history of the firm.
2. In an appendix, please provide the following information regarding the minimum requirements specified in Section II: client name, the name of the contact person who is able to provide a reference, a description of the nature of the work, the size and complexity of the project.

**C. Services to be Provided -- Attorneys to be Assigned**

1. Please provide the following information for each attorney proposed to be assigned to work specified in this RFQ. Please designate which attorney will serve as the lead attorney.
  - a. Name.
  - b. Date of Admission to the California Bar.
  - c. Description of any pending disciplinary proceedings in California or elsewhere.
  - d. Office Location.
  - e. Length of employment with the firm.
  - f. Experience with respect to the matters specified in Section II, including at least three (3) specific transactions and 3 relevant cases.
2. Please also attach as an appendix the resume of each attorney to be assigned.

**D. Fee Structure**

Please describe your firm's fee structure with respect to proposed work. Please address each of the categories specified below:

1. Whether the firm would be willing to agree to a fee cap.
2. The standard hourly rate of each attorney and legal assistant who would be assigned to the Successor Agency project.
3. A list of reimbursable expenses and the rate charged for each.
4. Any reduced fees offered to other municipalities, governmental entities or nonprofit organizations.
5. Any other fees or charges.

**E. References**

Please provide two California public agency references for the lead attorney proposed to be assigned, including the reference's name, title, contact information and a description of the experience in the areas of law, as specified in Section II.B of this RFQ, on which the attorney worked. It is our preference that at least one of the references be the public agency's in-house counsel.

**F. Conflict of Interest**

Please identify any potential conflicts of interest your firm might have in providing services to the Oversight Board of the Successor Agency to the Redevelopment Agency, including but not limited to, (1) representation of any party who may have any interest in real property located in a redevelopment project area within the City of San Jose ("City"), (2) representation of any of the affected "taxing entities" (as defined in section 34171(e) of Health and Safety Code), or (3) representation of any member of the Oversight Board, or the appointing authority of the Oversight Board members.

**G. Litigation or Administrative Proceedings**

1. Please state whether or not there is any pending litigation involving the firm or any attorney in the firm arising from legal services provided by the attorney or the firm. If the answer is yes, please describe the nature and the status of the litigation.
2. Are there any pending criminal or administrative actions (including disciplinary matters) involving the firm or any attorney in the firm which arise from legal services provided by the attorney or the firm? If yes, please describe the nature of such actions and the status.
3. For the types of actions described in question G-2, please state whether any such actions have been brought since January, 2003. If yes, please explain.

**H. Debarments or Suspensions**

Please indicate whether your firm, or any individual attorneys who are principals, partners or employees of your firm, have been debarred or suspended by any public entity from obtaining or performing a contract.

**IV. SELECTION PROCESS AND EVALUATION CRITERIA**

**A. Selection Process**

The responses to the RFQ will be evaluated by a panel selected by the Oversight Board ("Evaluation Panel").

Set forth below are the criteria that the Evaluation Panel will use to evaluate responses to this RFQ. The Evaluation Panel will evaluate the SOQs of the firms that have met the minimum qualifications. The Evaluation Panel reserves the right to interview prospective firms prior to making its selection and also reserves the right to rely on information from sources other than the information provided by the respondents.

In order to be considered for selection, a firm must receive a minimum score of **70 points**.

Based on the recommendation of the Evaluation Panel, the Successor Agency will bring the proposed selection to the Oversight Board of the Successor Agency for approval.

## B. Evaluation Criteria

The responses to this RFQ will be evaluated based on the following factors:

1. Firm Experience (30 points total).

Quality and depth of experience(s) and expertise with the areas of law specified in Section II.B of this RFQ.

2. Assigned Staff (40 points total).

a. Professional and educational qualifications. (10 points)

b. Quality and depth of experience(s) and expertise with the areas of law specified in Section II.B of this RFQ.

3. Fee Structure (20 points).

4. Responsiveness of SOQ (10 points).

Overall organization and quality of SOQ, including cohesiveness, conciseness, clarity of response and attention to detail.

## V. MISCELLANEOUS MATTERS

### A. Additional RFQ Information

The Successor Agency will not be responsible for, nor be bound by, any oral instructions or explanations issued by its representatives. Questions or requests for additional information or clarifications regarding this RFQ must be submitted prior to May 30, 2014 by email to Patricia Deignan, Chief Deputy City Attorney at [patricia.deignan@sanjoseca.gov](mailto:patricia.deignan@sanjoseca.gov). Any response to questions or requests for additional information or clarifications will be in the form of an addendum to this RFQ and will be posted on DemandStar. All addenda shall become part of this RFQ.

***The deadline for submitting inquiries or requests for clarifications is 1:00 p.m. (Pacific Time) on May 30, 2014. We will not respond to inquiries or requests for clarifications submitted after the deadline.***

### B. Public Nature of Proposal Material

All correspondence with the City Attorney's Office including responses to this RFQ will become the exclusive property of the Successor Agency and will become public records under the California Public Records Act (Cal. Government Code Section 6250 et seq.) All documents that you send to the City Attorney's Office will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Therefore, any proposal which contains language purporting to render all or significant portions of their proposal "Confidential", "Trade Secret" or "Proprietary", or fails to provide the exemption information required as described below will automatically be considered a public record in its entirety and shall be disclosed to the requesting party without further consideration or notice.

Do not mark your entire proposal as "confidential".

No part of any proposal will be disclosed before the Evaluation Panel announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFQ will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City Attorney's Office may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City Attorney's Office will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

**C. Costs**

All costs associated with responding to this request are to be borne by the respondent.

**D. Effect of RFQ**

The Successor Agency on behalf of the Oversight Board reserves the right to terminate this selection process at any time, to accept or reject any or all SOQs, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the SOQ. The Successor Agency is not obligated to proceed with hiring any counsel as a result of this RFQ. This RFQ supersedes any RFQ previously issued by this Office and any previous submission by a firm with respect to legal services set forth in this RFQ.

This RFQ and the interview process shall in no way be deemed to create a binding contract or agreement of any kind between the Successor Agency and the respondent. A consultant agreement, in a form to be provided by the Successor Agency, will form the basis of the contract between the parties.

## **E. Process Integrity Guidelines**

Proposers may be disqualified from the procurement without further consideration for any of the following:

1. Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
2. Failure to direct all questions/inquiries through the contact listed in this document.
3. Offering gifts or souvenirs, even of minimal value, to officers or employees of the Successor Agency or to members of the Oversight Board.
4. Any attempt to improperly influence any member of the Evaluation Panel.
5. Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and any taxing entity in Santa Clara County.
6. Evidence of submitting incorrect information in the response to a solicitation or misrepresenting or failing to disclose material facts during the evaluation process.
7. Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.
8. Proposer's default under any agreement, resulting in termination of such Agreement.

## **F. Additional Matters**

1. The Evaluation Panel on behalf of the Oversight Board reserves the right to waive any informality or irregularity in any SOQ.
2. The Successor Agency reserves the right to negotiate the fees of the selected firm.
3. Attachment A is the current insurance requirements that a selected firm must carry. Please note that these requirements are subject to change. Proof of such insurance coverage is not required to be submitted with the SOQ.

## ATTACHMENT A

### INSURANCE

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

#### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

#### **B. Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by the Successor Agency. At the option of the Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Successor Agency, its officers, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Successor Agency.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. The City of San Jose acting in its capacity as the Successor Agency, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the Successor Agency, its officers, employees, agents and contractors.
  - b. CONSULTANT's insurance coverage shall be primary insurance as respects the Successor Agency, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY acting in its capacity as Successor Agency, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided the Successor Agency, its officers, employees, agents, or contractors.

- d. Coverage shall state that 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.
- e. Coverage shall contain a waiver of subrogation in favor of the Successor Agency, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the Successor Agency, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the Successor Agency, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to the Successor Agency.

**F. Verification of Coverage**

CONSULTANT shall furnish the Successor Agency with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to : [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov), or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose—Finance  
Risk Management  
200 East Santa Clara Street, 13th Floor Tower  
San Jose, CA 95113-1905

**G. Subcontractors**

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**Oversight Board Conflicts Counsel RFQ**

Allen Matkins  
Three Embarcadero Center, 12<sup>th</sup> Floor  
San Francisco, CA 94111-4074

Bartkiewicz, Kronick & Shanahan  
1011 22nd Street  
Sacramento, CA 95816-4907

Berliner Cohen  
10 Almaden Blvd, 11<sup>th</sup> Floor  
San Jose CA 95113

Best Best & Krieger LLP  
2001 N. Main St, #390  
Walnut Creek, CA 94596

Bingham McCutchen LLP  
Three Embarcadero Center  
San Francisco, CA 94111-4067

Brewer Lofgren  
4005 Manzanita Avenue, Suite 6-511  
Carmichael, CA 95608

Miller Starr Regalia  
153 Townsend Street  
San Francisco, CA 94107

Conner & Associates  
268 Bush St, #3109  
San Francisco, CA 94104

Cox Castle Nicholson  
555 California St, 10<sup>th</sup> Fl  
San Francisco, CA 94101

Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814

Duane Morris LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105-1127

Duncan, Weinberg, Genzer & Pembroke P.C.  
915 L Street, Suite 1410  
Sacramento, CA 95814

Greben & Associates  
125 E. De La Guerra Street, Suite 203  
Santa Barbara, CA 93101

Hanson Bridgett  
425 Market St, 26<sup>th</sup> Floor  
San Francisco, CA 94105

Hinshaw & Culbertson LLP  
One California Street, 18th Floor  
San Francisco, CA 94111

Holland & Knight  
50 California Street, Suite 2800  
San Francisco, CA 94111

Hoge, Fenton, Jones & Appel, Inc.  
60 S. Market St, Suite 1400  
San Jose, CA 95113-2396

Hopkins & Carley  
The Letitia Building  
70 S. First Street  
San Jose, CA 95113

Jon R. Parsons Law Firm  
228 Hamilton Avenue, Suite 325  
Palo Alto, CA 94301

Jones Day  
555 California Street, 26th Floor  
San Francisco, CA 94104

Jorgenson, Siegel, McClure & Flegel LLP  
1100 Alma Street, Suite 210  
Menlo Park, CA 94025-3392

Kahn, Soares & Conway, LLP  
1415 L Street, Suite 400  
Sacramento, CA 95814

**Oversight Board Conflicts Counsel RFQ**

Kilpatrick Townsend & Stockton LLP  
1080 Marsh Road  
Menlo Park, CA 94025

Kronick Moskowitz Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Fl  
Sacramento, CA 95814

Miller & Owen  
428 J Street, Suite 400  
Sacramento, CA 95814

Miller Morton Caillat & Nevis LLP  
50 W. San Fernando St., Suite 1300  
San Jose, CA 95113

Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482

McPharlin Sprinkles & Thomas LLP  
160 W. Santa Clara St, Suite 400  
San Jose, CA 95113

Meyers Nave  
575 Market Street, Suite 2080  
San Francisco, CA 94105

Neumiller & Beardslee  
509 W. Weber Ave, 5<sup>th</sup> Fl  
Stockton, CA 95203

Nossaman LLP  
50 California Street, 34th Floor  
San Francisco, CA 94111

Renne Sloan Holtzman & Sakai  
350 Sansome Street, Suite 300  
San Francisco, CA 94104

Stradling Yocca Carlson & Rauth  
44 Montgomery Street, Suite 4200  
San Francisco, CA 94104-4803

MEMORANDUM

TO: OVERSIGHT BOARD	FROM: TONY ESTREMER BOARD MEMBER
SUBJECT: SEE BELOW	DATE: June 19, 2014

**SUBJECT: OVERSIGHT BOARD SELECTION OF CONFLICTS COUNSEL**

**RECOMMENDATION**

Adopt a resolution approving the selection of Montoy Law Corporation to provide legal services to the Oversight Board on an as needed basis.

**BACKGROUND**

At a special meeting on May 2, 2014, the Oversight Board directed Successor Agency staff to prepare and release a Request for Qualifications ("RFQ") for conflicts counsel. On May 15, 2014, the Successor Agency released the new RFQ for conflicts counsel. At the Oversight Board meeting on May 22, 2014, the Oversight Board selected Tony Estremera, Santa Clara Valley Water District, Debbie Cauble, County of Santa Clara, and Maribel Medina, Santa Clara County Office of Education, to evaluate the responses on behalf of the Oversight Board ("Evaluation Panel") and to recommend a conflict counsel for consideration by the Oversight Board.

**ANALYSIS**

On June 9, 2014, responses to the RFQ were received from the following firms: (a) Alvarez-Glasman & Colvin, (b) Blackwell, Santaella & Jahangiri, LLP, and (c) Montoy Law Corporation. Thereafter, the Evaluation Panel met, reviewed the responses, and conducted interviews and subsequently selected Montoy Law Corporation, with Hilda Cantu Montoy as lead attorney, as the firm to be forwarded to the Oversight Board for its consideration as conflict counsel. Ms. Montoy's resume is attached. The Evaluation Panel recommends that the Oversight Board adopt a resolution selecting Montoy Law Corporation as conflicts counsel to provide legal services to the Oversight Board.

If the Oversight Board approves the selection, the Successor Agency will enter into an agreement with Montoy Law Corporation for legal services. The Successor Agency's

OVERSIGHT BOARD

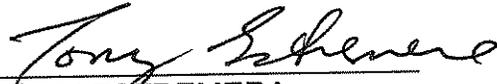
June 19, 2014

**Subject: Selection of Conflict Counsel**

Page 2

agreement with Montoy Law Corporation would be added to the next Recognized Obligation Payment Schedule as an enforceable obligation.

OVERSIGHT BOARD MEMBER

  
TONY ESTREMERERA

# HILDA CANTÚ MONTÓY

2125 Kern Street, Suite 308 • Fresno, CA 93721 • 559-579-1924 • 559-579-1923 (Fax) • [hildac@montoylaw.com](mailto:hildac@montoylaw.com)

## EDUCATION

<b>J.D.</b> <i>Stanford Law School</i>	1976 <i>Stanford, California</i>
<b>B.A. - POLITICAL SCIENCE</b> <i>Stanford University</i>	1973 <i>Stanford, California</i>

## EXPERIENCE

<b>MONTÓY LAW CORPORATION</b> <i>2125 Kern Street, Suite 308</i>	MAY 2009 TO PRESENT <i>Fresno, California</i>
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Ms. Montoy represents public agencies as general counsel and special counsel in a broad spectrum of public agency law matters. She has extensive public sector experience in governance, contracts, public works, land use, CEQA, impact fees, personnel, and labor relations. She utilizes her experience and knowledge to assist clients in their governance and decision making process, in her advice to clients, and in her representation of clients. Ms. Montoy emphasizes the importance of transparency laws (Brown Act, Public Records Act, conflicts of interest, competitive bidding). Ms. Montoy also conducts independent personnel investigations and serves as a legal advisor in personnel hearings. The firm commenced operation in May 2009, as a solo practice. "Hilda Cantú Montoy, Attorney at Law", and incorporated in June 2012 as Montoy Law Corporation.

<b>PUBLIC PRACTICE DEPARTMENT CHAIR</b> <i>Dowling, Aaron &amp; Keeler, Inc.</i> <i>8080 N. Palm Avenue, Third Floor</i>	JUNE 2006 TO MAY 2009 <i>Fresno, California</i>
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Chair of firm's Public Practice Group and member of Firm's Board of Directors. Represented and advised public sector clients as general counsel and special counsel and private sector clients in business transactions and personnel matters with emphasis on governance, elections, ethics, conflicts of interest, land use, personnel and constitutional law.

<b>CITY ATTORNEY</b> <b>ACTING CITY ATTORNEY</b> <i>City of Fresno</i> <i>2600 Fresno Street</i>	JULY 1995 TO MARCH 2006 FEBRUARY 1995 TO JULY 1995 <i>Fresno, California</i>
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Represented and advised Mayor, City Council, City officials, departments, and boards and commissions on all legal matters pertaining to their office and operations. Managed and supervised City Attorney's Office, a legal office with 19 attorneys, 3 legal assistants and 18 support staff. Practice included advisory and litigation work on major business transactions, land use matters, economic development and redevelopment projects, public financings, personnel/labor relations, civil rights and constitutional law issues, and complex litigation. Established expertise in local governance and public policy.

**ASSISTANT CITY ATTORNEY**  
*City of Fresno*  
2600 Fresno StreetSEPTEMBER 1990 TO FEBRUARY 1995  
*Fresno, California*

Served as Civil Advisor Unit Supervisor and handled special projects for City Council and City Manager. Supervised land use, redevelopment/economic development, police legal advisor, personnel/labor relations, municipal finance, and contracts attorneys and support staff.

**PRIVATE PRACTICE**  
6067 N. Fresno Street, Suite 101AUGUST 1987 TO AUGUST 1990  
*Fresno, California*

Managed solo civil practice focusing on local agency law, labor relations and employment law. Represented management and employees in both the private and public sectors. Served as legal counsel to Fresno Private Industry Council, Fresno County Local Agency Formation Commission (LAFCO), Fresno Employment Training Commission, and various cities and special districts.

**ASSOCIATE**  
*Law Office of William J. Smith*  
1111 Fulton Mall, Suite 400JUNE 1985 TO JUNE 1987  
*Fresno, California*

Represented employers and employees before the Department of Fair Employment and Housing, the California Labor Commissioner, civil service boards, and school boards as well as in state and federal courts. Served as legal counsel for the Fresno Private Industry Council and the Fresno Employment and Training Commission (both joint powers agencies of the City of Fresno and County of Fresno).

**DEPUTY CITY ATTORNEY**  
*City of Fresno*  
2326 Fresno StreetSEPTEMBER 1980 TO MARCH 1985  
*Fresno, California*

Handled personnel, labor relations, elections, conflicts of interest, land use, municipal code, and cable television matters. Served as legal advisor to Civil Service Board, Planning Commission, Fresno City Employees Health and Welfare Trust, Fresno City Employees Retirement Board, Fire and Police Retirement Board, and Building Commission. Drafted legal opinions, charter amendments, ordinances, resolutions, contracts, deeds, leases and other legal documents.

**ASSISTANT REGIONAL COUNSEL**  
*U.S. Community Services Administration*  
450 Golden Gate AvenueAUGUST 1978 TO JUNE 1980  
*San Francisco, California*

Represented the Community Services Administration in its legal matters including drafting of federal regulations, consultation with staff on legal matters and related policy issues, ensuring legal eligibility of grantees, development and implementation of a regional compliance manual, training for staff and for grantees in Arizona, Hawaii, Nevada, and California, and some litigation.

**STAFF ATTORNEY**  
*Alameda County Legal Aid Society*  
525 "H" StreetSEPTEMBER 1976 TO AUGUST 1978  
*Union City, California*

Represented indigent clients in a variety of matters such as landlord-tenant and debt collection. Legal advisor to parent and student groups concerning education issues and to a community clinic concerning health-related government regulations.

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**PROFESSIONAL AFFILIATIONS & ACTIVITIES**


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- Contributor, League of California Cities – City Attorneys Department: Report of the Department’s Ad Hoc Due Process Committee, October 2005
- Contributing Editor, The Rutter Group, California Practice Guide: Employment Litigation (2009)
- Eastern District Judicial Screening Panel for Senator Feinstein
- Facilitator, “Measurement of Staff Workload and Performance.” League of California Cities Large Cities Conference, November 1998
- Speaker (“The Changing Role of the City Attorney in the New Millennium”). Continuing Education Seminar For Municipal Attorneys, May 2001
- Speaker (“Providing Conflict Of Interest Advice Under The Political Reform Act”), Continuing Education Seminar For Municipal Attorneys, 1999
- Federal Bar Association Board, San Joaquin Valley Chapter, Executive Board
- Fresno County Bar Association
- Fresno County Bar Association Board of Directors
- Presenter, Fresno County Women Lawyers - “Breaking the Glass Ceiling,” 2005
- Fresno County Women Lawyers
- La Raza Lawyers Association
- League of California Cities – City Attorneys Department: Editorial Board, “Open & Public IV: A Guide to the Ralph M. Brown Act” (2006)
- League of California Cities Fair Political Practices Commission Committee
- Merit Selection panel for New Federal Magistrate Judge, Fresno
- Presenter on Due Process at IMLA Conference
- Presenter on Brown Act Serial Meetings for State Bar
- San Joaquin College of Law – Taught Municipal Law Course
- State Bar of California
- State Bar of California Legal Services Trust Fund Commission
- U.S. Federal District Court (Northern and Eastern Districts)

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**COMMUNITY ACTIVITIES**


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- Board of Directors: Maddy Institute (current)
- California School Personnel Commissioners Association
- Census 2000 Outreach Program
- Centro La Familia Board of Directors
- Edison H.S. School Site Council
- Fresno Metropolitan Museum Board of Directors
- Golden Valley Girl Scout Council Board of Directors
- Keynote Speaker Math/Science Conference for High School Girls (American Association of University Women)
- Lecturer at California State University, Fresno
- Speaker at various career days at Elementary and High Schools
- St. Agnes Medical Center Board of Directors
- Stanford Alumni Association Executive Board
- State Center Community College District Personnel Commission
- United Health Centers Board of Directors

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**AWARDS & HONORS**

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- 2007 Justice Pauline Hanson Award
- 2006 Rebozo Award – Arte Americas
- 2003 Woman of the Year – State Legislature
- 1995 Top 10 Professional Women of the Year
- Honorary Chair - American Diabetes Association Hispanic Education Kick Off
- Outstanding Leadership Award in “Legal/Justice” Category Presented by Assembly Member Sarah Reyes, 1999
- “Special Recognition Award” Presented by La Raza Lawyers Association, 1996
- “Latinas Beyond Boundaries Award” Presented by Central California Hispanic Chamber of Commerce, May 1997; October 2001
- Recognition Award Presented by League of Mexican American Women, 1997
- Appreciation Award Presented by Mexican American Legal Defense and Education Fund, 1998

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**PERSONAL DATA**

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Languages: English & Spanish  
Health: Excellent  
Family: Married with three married children and two granddaughters  
Interests: Soccer, Cooking, Gardening, Card Games

**RESOLUTION NO.**

**RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING A PROCUREMENT PROCESS AND AUTHORIZING THE OVERSIGHT BOARD CHAIR TO NEGOTIATE A CONTRACT WITH NEW OVERSIGHT BOARD COUNSEL**

**WHEREAS**, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (the "Dissolution Law"); and

**WHEREAS**, pursuant to Health and Safety Code sections 34179(n)-(o), the Oversight Board may in furtherance of its duties under the Dissolution Law (1) direct the Successor Agency to provide additional legal advice beyond what is given by the Successor Agency staff, and (2) enter into contract to procure administrative support;

**WHEREAS**, pursuant to Health and Safety Code section 34177.3(b), the Successor Agency may create enforceable obligations to acquire legal counsel to conduct the work of winding down the former redevelopment agency; and

**WHEREAS**, in light of the potential divergence of interests among the City, Successor Agency, and Oversight Board, on October 4, 2012, the Oversight Board determined the need for independent outside legal counsel to advise the Oversight Board regarding the expeditious wind down the affairs of the redevelopment agency; and

**WHEREAS**, the Oversight Board previously contracted with Miller & Owen to serve as legal counsel to the Oversight Board; and

**WHEREAS**, due to the impending merger of Miller & Owen with another firm, Renne Sloan Holtzman Sakai, LLP ("RSHS"), a firm that provides legal services to the City of Milpitas, RSHS requested that the City of Milpitas approve a conflict waiver to allow current Oversight Board counsel to continue in her existing capacity; and

**WHEREAS**, the City of Milpitas has declined to approve the requested waiver, and staff has recommended that the Oversight Board therefore select new counsel.

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board has considered the full record before it, which includes but is not limited to the staff report, testimony by staff and the public, and other materials and evidence provided to it; and

**BE IT FURTHER RESOLVED** that the Oversight Board authorizes the Board Chair to select and negotiate a contract with new Oversight Board counsel with a term of January 1, 2015, through June 30, 2016, and a not-to-exceed amount between \$60,000 and \$80,000.

**PASSED AND ADOPTED** this 2nd day of December, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Barbara Crump  
Oversight Board Secretary

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Maribel S. Medina  
Oversight Board Chair

## **OVERSIGHT BOARD STAFF REPORT**

**MEETING DATE:** December 2, 2014

### **ITEM VI.B: RECEIVE UPDATE ON APPRAISAL PROCESS AND TAKE ANY ACTION REQUIRED TO COMPLETE APPRAISAL PROCESS**

#### **RECOMMENDED ACTION(S):**

Receive update on status of appraisal process and take any action required to complete the appraisal process.

#### **DISCUSSION:**

As discussed at the Board's November 3, 2014, meeting, the Request for Qualifications (RFQ) for appraisers to evaluate four of the five properties included in the LRPMP was finalized and distributed on October 17, 2014. Three Statements of Qualifications were received on October 24, 2014, in response to the RFQ.

On November 3, 2014, the Oversight Board approved the Subcommittee's selection of appraisers, including CBRE, Colliers, and Valbridge Property Advisors ("Valbridge"), and directed the Subcommittee to negotiate and approve contracts with the best qualified and least expensive appraiser(s) to complete each of the four appraisals.

Following the negotiation process, the Subcommittee determined that it would contract with Valbridge Property Advisors for all four appraisals. The contract was prepared, and Board member Williams provided proposed appraisal instructions to be attached to the contract.

The proposed appraisal instructions included direction to the appraiser to appraise the property "irrespective of zoning and General Plan designation." The Board Chair and Board Member Williams have requested that the property be appraised "irrespective of zoning and General Plan designation," based on language in Section 3 of the Settlement Agreement which states that the real properties listed on Schedule 4 of the Settlement Agreement (3 of the 4 to be appraised) shall be "designated for sale under Health and Safety Code section 34191.5(c)(2)(B), to be liquidated in a manner that **maximizes the financial returns to the affected taxing entities on account of such liquidations.**" (emphasis added). Section 3.e. of the Settlement also states that the "City Parties represent, warrant, and agree to take all actions necessary for and to fully cooperate with the implementation of the recommendations set forth in Subsection 3(d) of this Agreement, including making best efforts to cooperate with the sale of any properties designated for sale **to maximize the financial returns to the affected taxing entities on account of such liquidations.**" (emphasis added).

The City Manager, Tom Williams, and Board Member Karlen have objected to this language and demanded that it be removed, arguing that it circumvents the City's right to exercise its land use authority. However, the City Manager has expressed that he is in favor maximizing value for the land by analyzing variables that are relevant, and that he does not believe that a blind appraisal based on highest and best use provides information that is relevant.

Staff believes that the proposed instruction will solicit information to be utilized by the Successor Agency and Oversight Board during the eventual disposition of the properties listed in the LRPMP.

The proposed contract with Valbridge is attached for the Oversight Board's consideration and, if needed, approval.

#### **ATTACHMENT(S):**

Proposed Contract

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE SUCCESSOR AGENCY TO THE FORMER MILPITAS REDEVELOPMENT AGENCY AND  
VALBRIDGE PROPERTY ADVISORS**

THIS AGREEMENT for consulting services is made by and between the Successor Agency to the Former Milpitas Redevelopment Agency ("Agency"), on behalf of its Oversight Board, and Valbridge Property Advisors ("Consultant") as of [REDACTED], 2014.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on December 24, 2014, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Agency's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Assigned personnel should have an MAI or SRPA designation. Exhibit A shall name any specific personnel who shall be performing services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** Agency hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$12,500.00 for all services to be performed and reimbursable costs incurred under this Agreement. Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Agency to

Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Agency in the manner specified herein. Except as specifically authorized by Agency, Consultant shall not bill Agency for duplicate services performed by more than one person.

Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. Agency therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At Agency's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

2.2 **Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the Agency to pay Consultant. In the event that an invoice is not acceptable to the Agency, said invoice shall be returned to Consultant within thirty (30) days of the Agency's receipt of the invoice with a detailed explanation of the deficiency. Agency's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 **Total Payment.** Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

Agency shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the Agency and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the Agency or Consultant terminates this Agreement pursuant to Section 8, the Agency shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The Agency shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the Agency.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. Agency shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Agency shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Agency employees and reviewing records and the information in possession of the Agency. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of Agency. In no event shall Agency be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the Agency's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the Agency.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to Agency of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the Agency. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the Agency upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to Agency. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Agency Counsel. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the Agency and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled 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 Agency.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury,

including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. Agency and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to Agency or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the Agency and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the Agency shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to AGENCY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled 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 Agency.

4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled 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 Agency.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

a. The retroactive date of the policy must be shown and must be before the date of the Agreement.

b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the Agency.

c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The Agency shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

d. A copy of the claim reporting requirements must be submitted to the Agency prior to the commencement of any work under this Agreement.

#### 4.4 **Requirements for All Policies.**

4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish Agency with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized

by that insurer to bind coverage on its behalf. The Agency reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of Agency for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the Agency, Consultant may increase such deductibles or self-insured retentions with respect to Agency, its officers, employees, agents, contractors, consultants, and volunteers. The Agency may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the Agency.

4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to Agency at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies Agency may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Agency may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Agency may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

- 4.6 **Waiver.** The Risk Manager of the Agency has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the Agency or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Agency of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of Agency, Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement

System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Agency that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Agency or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** Agency may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the Agency in connection with this Agreement.

- 8.2 **Extension.** Agency may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if Agency grants such an extension, Agency shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Agency, Agency shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** Agency and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to Agency for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the Agency.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, Agency's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

**Section 9. KEEPING AND STATUS OF RECORDS.**

9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency at any time upon demand of the Agency. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Agency and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the Agency within the time period specified by the Agency shall be a material breach of this Agreement. Agency and Consultant agree that, until final approval by Agency, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the Agency in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the Agency or of the City of Milpitas. If Consultant were an employee, agent, appointee, or official of the Agency or of the City of Milpitas in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Emma C. Karlen who is authorized to act for, and on behalf of, Agency. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Consultant shall be sent to:  
Norman C. Hulberg, MAI  
Senior Managing Director  
Valbridge Property Advisors  
San Jose, CA 95113
- Any written notice to Agency shall be sent to:  
Emma C. Karlen, CPA  
Assistant City Manager/Director of Financial Services  
455 East Calaveras Boulevard  
Milpitas, California 95035
- 10.11 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

SUCCESSOR AGENCY TO FORMER MILPITAS  
REDEVELOPMENT AGENCY

CONSULTANT

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Thomas Williams, Executive Director

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(name, title)

APPROVED AS TO FORM:

Taxpayer Identification Number

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Michael Ogaz, Agency General Counsel

APPROVED AS TO CONTENT:

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Emma Karlen, Agency Finance Director

## EXHIBIT A

### SCOPE OF SERVICES

Project leader will be Norman C. Hulberg, MAI, Walter D. Carney, MAI, Stephen D. Kuhnhoff, MAI or Yvonne Broszus, MAI. The project leader will:

- Provide appraisals of real property based on current fair market value for highest and best use for the following real properties within the City of Milpitas:
  1. 86 N. Main Street, vacant land, APN # 028-24-025
  2. Alder Drive and Barber Lane, vacant land, APN #086-02-086
  3. 230 N. Main Street, vacant land, APN #s 028-34-001 through -094
  4. 540 S. Main Street, community center, APN# 086-10-025
- Adhere to appraisal practices as required to conform to the Uniform Standards of Professional Appraisal Practice (USPAP).
- Adhere to the following specific appraisal instructions:
  1. For all four parcels, the appraisals should determine current fair market value based upon highest and best use, irrespective of current zoning, general plan designation, current use, or any other limitation over which the City of Milpitas has discretion.
  2. For Parcel number 2, in addition to the fair market valuation as a stand-alone parcel, the appraiser is asked to determine whether, and by how much, the appraisal valuation for the subject parcel per square foot would be different if the subject parcel were to be combined with the adjoining, similarly sized parcel owned by VTA.
- Review completed appraisals with Agency staff and/or the Oversight Board as needed.
- Maintain timely communication with the Agency staff.
- Complete the appraisal for all four properties not later than December 24, 2014.

## EXHIBIT B

### COMPENSATION SCHEDULE

Compensation is fixed price based on the following:

1.	86 N. Main Street, vacant land, APN # 028-24-025	\$2,500
2.	Alder Drive and Barber Lane, vacant land, APN #086-02-086	\$3,000
3.	230 N. Main Street, vacant land, APN #s 028-34-001 through -094	\$3,500
4.	540 S. Main Street, community center, APN# 086-10-025	\$3,500