

RESOLUTION NO. 6

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY AMENDING CONTRACT WITH OUTSIDE LEGAL COUNSEL IN RESPONSE TO DEPARTMENT OF FINANCE LETTER RELATING TO FUNDING OF OVERSIGHT BOARD LEGAL SERVICES THROUGH THE ADMINISTRATIVE COST ALLOWANCE

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 section 34177, the Oversight Board (the Oversight Board) of the Successor Agency of the former Milpitas Redevelopment Agency (the Successor Agency) shall direct the expeditious wind down the affairs of the redevelopment agency consistent with its fiduciary responsibilities to holders of enforceable obligations and the taxing entities; 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, on August 28, 2012, the State Controller s Office ordered the City of Milpitas (the City) and the Milpitas Economic Development Corporation (the EDC) to reverse all unallowable transfers of assets received from the former redevelopment agency and return such assets to the Successor Agency; and

WHEREAS, the City, EDC, and Successor Agency have been collectively represented by the City Attorney s Office and the Oversight Board remains unrepresented by independent outside legal counsel; and

WHEREAS, in light of the divergence of interests among the City, EDC, and Successor Agency, on October 4, 2012, the Oversight Board determined the need for independent outside legal counsel to advise the Oversight Board regarding, among other matters, its obligations under the Dissolution Law to seek the return of assets held by the City and EDC in contravention of the State Controller s Order; and

WHEREAS, the Oversight Board created and directed subcommittee chaired by Member Bruce Knopf, Vice Chair Mike Mendizabal, and Tom Williams, in his capacity as Executive Director to the Successor Agency (the Subcommittee), to solicit proposals, conduct interviews, and bring to the Oversight Board a recommendation for award of a contract for legal services; and

WHEREAS, having solicited and received proposals and conducted interviews for outside counsel, the Subcommittee recommended that the Oversight Board appoint the firm of Miller & Owen as legal counsel to the Oversight Board and approve other actions as necessary; and

WHEREAS, the Oversight Board approved by Resolution a contract for outside legal services with Miller & Owen; and

WHEREAS, the Oversight Board directed that the Successor Agency designate the professional services contract with Miller & Owen (Agreement) as an enforceable obligation to be placed on the Successor Agency s Recognized Obligation Payment Schedule and excluded from the administrative cost allowance; and

WHEREAS, pending Department of Finance confirmation regarding the appropriate source of monies for payment under the Agreement, and so long as the Successor Agency is the entity administering the Agreement, the fees for initial work were limited to \$2,500; and

WHEREAS, written guidance was sought from the Department of Finance regarding the source of monies to be used to pay for legal services and whether reimbursement of monies expended for legal advice to the Oversight Board would constitute an enforceable obligation; and

WHEREAS, the State Department of Finance, by letter dated November 1, 2012 (attached as Exhibit A), determined that general legal services for the Oversight Board are considered an enforceable obligation subject to the administrative cost allowance outlined in Health and Safety Code section 34171 (b); and

NOW, THEREFORE, BE IT RESOLVED that the Successor Agency is hereby authorized and directed to designate the professional services contract with Miller & Owen as an enforceable obligation to be placed on the Successor Agency's Recognized Obligation Payment Schedule, to be paid from the administrative cost allowance as defined in Health and Safety Code section 34171 (b).

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BE IT FURTHER RESOLVED that section 2 of the Agreement with Miller & Owen, "CLIENT'S RESPONSIBILITIES" shall be deleted as follows:

~~Pending Department of Finance confirmation regarding source of monies for payment under this Agreement, and so long as the Successor Agency is the entity administering the Agreement, there shall be \$2,500 limit on fees for initial work~~

The remaining terms and conditions of the Agreement shall remain in full force and effect.

PASSED AND ADOPTED this 14th day of November 2012, by the following vote:

AYES: (5) Chair Gage, Vice Chair Mendizabal and Board Members Grilli, Knopf and Murdter

NOES: (2) Board Members Gomez and Karlen

ABSENT: (0)

ABSTAIN: (0)

ATTEST:


Mary Lavelle, Oversight Board Secretary

APPROVED:


Donald Gage, Chair



November 1, 2012

Ms. Emma Karlen, Director of Financial Services
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Ms. Karlen:

Subject: Objection to Oversight Board Action

The City of Milpitas Successor Agency (Agency) notified the California Department Finance (Finance) of its October 23, 2012 Oversight Board (OB) resolution on October 30, 2012. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB resolution, which may have included obtaining clarification for various items.

Based on our review and application of the law, OB resolution No. 5 authorizing the execution of a professional services contract with Miller & Owen for oversight board legal services is being returned for reconsideration. HSC section 34179 (n) authorizes an oversight board to direct the successor agency to provide independent legal counsel and HSC section 34179 (p) provides that oversight board decisions in this regard are binding on successor agencies. Therefore, legal services for the oversight board are considered an enforceable obligation. However, Finance believes it is an enforceable obligation subject to the administrative cost allowance outlined in HSC section 34171 (b). Since OB resolution No. 5 requests this obligation be excluded from the administrative cost allowance, Finance cannot approve this OB action at this time. This is our determination with respect to the OB action taken.

Please direct inquiries to Justyn Howard, Assistant Program Budget Manager, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Jane Corpus Takahashi, Finance Manager, City of Milpitas
Ms. Irene Lui, Controller-Treasurer, Santa Clara County