

RESOLUTION NO. 7

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY DIRECTING SUCCESSOR AGENCY STAFF TO PROVIDE A REPORT ON THE YEAR-TO-DATE EXPENDITURES UNDER THE CURRENT ADMINISTRATIVE BUDGET, TO SUBSTITUTE LEGAL COUNSEL AND STAFF UNDER THE APPROVED ADMINISTRATIVE BUDGET, AND DIRECT STAFF TO ASSIST IN THE TRANSFER OF RESPONSIBILITIES

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 (c) and (p), respectively, the Oversight Board, in furtherance of its duties under the Dissolution Law, may direct the staff of the successor agency to perform work, and if necessary, may supersede decisions made by the Successor Agency or Successor Agency staff on matters within the purview of the Oversight Board; and

WHEREAS, pursuant to Health and Safety Code sections 34179 (n), on October 23, 2012, the Oversight Board adopted Resolution No. 5, appointing the firm of Miller & Owen as outside legal counsel to the Oversight Board due to the divergence of interests among the City, the Milpitas Economic Development Corporation ("EDC"), and the Successor Agency; and

WHEREAS, the State Department of Finance, by letter dated November 1, 2012, 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

WHEREAS, since receiving the State Department of Finance's letter, discussions and correspondence between Successor Agency staff and the members of the Oversight Board, attached hereto as Exhibit A, have demonstrated the need for the Oversight Board to contract for administrative support, pursuant to Health and Safety Code sections 34179 (o), to substitute for services currently provided to the Oversight Board by the staff of the Successor Agency; and

WHEREAS, based on Successor Agency staff's refusal to prepare the November 14, 2012, agenda as requested by the Oversight Board pursuant to the adopted Rules and Regulations, the Oversight Board members, with the assistance of legal counsel, were required to prepare the agenda and necessary resolutions; and

WHEREAS, all meeting costs must be paid by the Successor Agency through its administrative budget, pursuant to Health and Safety Code section 34179 (c), which includes the cost for legal counsel's services incurred to prepare the budget and resolutions for the November 14, 2012, meeting; and

WHEREAS, in light of Successor Agency staff's refusal to provide the necessary and requested administrative services, the Oversight Board has determined that it must contract for administrative support, pursuant to Health and Safety Code sections 34179 (o), to substitute for services currently provided to the Oversight Board by the staff of the Successor Agency; and

WHEREAS, Santa Clara County has expressed its willingness to provide administrative support to the Oversight Board; and

WHEREAS, the Oversight Board directs Successor Agency staff to prorate the administrative cost budget to reflect that substitute staff and legal counsel shall be provided for the final three-quarters of the fiscal year, and to reflect that the provision of legal and administrative services to the Oversight Board by substitute staff and counsel will result in a 50% reduction in the percentage of time devoted by certain Successor Agency staff to the wind down the affairs of the former redevelopment agency.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby directs Successor Agency staff to make the following Oversight Board staffing changes, and to reflect these changes in the administrative cost budget which shall be provided to the Oversight Board at its next meeting. These staffing changes will not increase the total administrative cost budget:

- (1) Oversight Board staff will substitute for the Assistant City Attorney, given that the Assistant City Attorney was assigned to provide services to the Oversight Board, while the City Attorney, due to a conflict, was assigned to provide services to the Successor Agency. \$27,500 shall be reallocated for Oversight Board legal services from October 23, 2013, through the end of the fiscal year.
- (2) Oversight Board staff will also substitute for the Legal Assistant, City Manager, City Clerk, Deputy City Clerk, and Office Specialist, Executive Secretary, Finance Director, Budget Manager, and Accounting Manager in the FY 2012-13 budget. The percentage of time for each of these positions shall be reduced by half for the remaining eight months of the fiscal year; \$102,500 shall be reallocated for administrative support and legal services.

BE IT FURTHER RESOLVED that the amounts set forth above are based on the approved Administrative Cost Budget. However, in the event that these amounts are disputed, whatever amounts are available shall be reallocated, consistent with the formula utilized above and the intent of this Resolution.

BE IT FURTHER RESOLVED that the Oversight Board Chair, with the assistance of legal counsel, is authorized and directed to contract with the County of Santa Clara for administrative support to the Oversight Board, pursuant to Health and Safety Code section 34179 (o), subject to the following terms: (1) initially, the maximum fee payable under the MOU shall

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

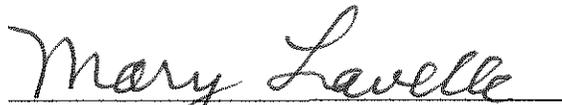
AYES: (5) Chair Gage, Vice Chair Mendizabal and Board Members Grilli, Knopf and Murdter

NOES: (2) Board Members Gomez and Karlen

ABSENT: (0)

ABSTAIN: (0)

ATTEST:


Mary Lavelle, Oversight Board Secretary

APPROVED:


Donald Gage, Chair

EXHIBIT A

Attached Correspondence

Subject: FW: RE: Milpitas OB Action Letter

From: Don Gage [<mailto:dongage@verizon.net>]
Sent: Tuesday, November 06, 2012 3:09 PM
To: Nancy Miller
Subject: Fwd: RE: Milpitas OB Action Letter

-----Original Message-----

From: Tom Williams
Date: Nov 6, 2012 2:33:50 PM
Subject: RE: Milpitas OB Action Letter
To: "'Knopf, Bruce'" <bruce.knopf@ceo.sccgov.org>
Cc: Mary Lavelle <mlavelle@ci.milpitas.ca.gov>, "Harrison, Emily" <emily.harrison@ceo.sccgov.org>, 'Don Gage' <dongage@verizon.net>, City Council <city_council@ci.milpitas.ca.gov>, Mike Ogaz <mogaz@ci.milpitas.ca.gov>, Bryan Otake <botake@ci.milpitas.ca.gov>

Bruce:

You have a history of interpreting the laws to meet your special interest and bully staff in an overwhelming attempt to benefit the County at the cost of the City of Milpitas. The November 1, 2012, DOF letter does not by any means return the actions of the OB back to the OB for reconsideration. It simply states DOF will not recognize the cost of outside legal counsel for reimbursement on a ROPS. The DOF has already provided final approval on ROPS 3 and there is no mechanism to amend by the OB. Sec. 34179(h) states the DOF decision is final after 5 days unless they (DOF) request a review - not you Bruce. The OB is not granted the power to request a review once DOF decision is final. That is to say only the DOF can return an action of the OB for reconsideration. The OB is not granted the same power - although you are attempting to grab that same power. You are over stepping your boundaries here Bruce. Unless there is another mechanism, such as funding the cost of Miller & Owen by the County or the other taxing entities that benefit, such as the Water District, Milpitas Unified School District, the County or Community College District, there is no funding source available. And yes, it is my power to manage the adopted administrative budget and take the final direction from DOF. As such, we will be canceling the meeting of November 14 at 4:00pm.

Thomas C. Williams
City Manager
City of Milpitas
(408) 586.3050

-----Original Message-----

From: Knopf, Bruce [<mailto:bruce.knopf@ceo.sccgov.org>]
Sent: Tuesday, November 06, 2012 7:12 AM

To: Tom Williams

Cc: Mary Lavelle; Harrison, Emily; Michael Mendizabal; City Council; Mike Ogaz; Bryan Otake

Subject: Re: Milpitas OB Action Letter

Tom,

The November 1st letter from DOF returned the Oversight Board's action to the Board for reconsideration.

You have been directed by the Oversight Board to place two items on the Board's next agenda in order that the Oversight Board can reconsider and resubmit a modified action for Department of Finance approval pursuant to 34179(h). You have been given specific wording for the agenda item titles.

Actions of the Oversight Board supersede that of Successor Agency staff - 34179(p). You have no authority to refuse this request.

Bruce Knopf

Director

Asset and Economic Development

County of Santa Clara

408.219.9811

Sent from my iPhone

On Nov 5, 2012, at 9:28 PM, "Tom Williams" <twilliams@ci.milpitas.ca.gov> wrote:

> Bruce:

>

> I cannot obligate the City of Milpitas to carry the cost of the OB. There needs to be another source of funds guaranteed to the City of Milpitas before we move forward. I am open to ideas but the City of Milpitas cannot afford to move forward in this manner. You are using City staff resources without a legal funding mechanism. The OB agreed to obtain an opinion from the State DOF and that opinion states they will not recognize payment of outside legal counsel.

>

> Thomas C. Williams

> City Manager

> City of Milpitas

> (408) 586.3050

>

> -----Original Message-----

> From: Knopf, Bruce [<mailto:bruce.knopf@ceo.sccgov.org>]

> Sent: Monday, November 05, 2012 7:06 PM

> To: Tom Williams

> Cc: Mary Lavelle; Harrison, Emily; Michael Mendizabal
> Subject: RE: Milpitas OB Action Letter
>
> Tom,
> These items have been put forward for placement on the Board's next agenda by two Oversight Board Members consistent with the process outlined in the adopted Rules and Procedures for setting the Agenda. On what authority are you deciding to reject the request?
> Bruce
>
> -----Original Message-----
> From: Tom Williams [<mailto:twilliams@ci.milpitas.ca.gov>]
> Sent: Monday, November 05, 2012 4:40 PM
> To: Knopf, Bruce
> Cc: Mary Lavelle; Harrison, Emily; Michael Mendizabal; City Council; Mike Ogaz; Bryan Otake
> Subject: RE: Milpitas OB Action Letter
>
> Bruce:
>
> Given the past practice of the Board and the inherent conflict I chose not to take that risk. I need assurances that the City of Milpitas is not a risk for funding actions of the OB.
>
> Thomas C. Williams
> City Manager
> City of Milpitas
> (408) 586.3050
>
>
> -----Original Message-----
> From: Knopf, Bruce [<mailto:bruce.knopf@ceo.sccgov.org>]
> Sent: Monday, November 05, 2012 4:02 PM
> To: Tom Williams
> Cc: Mary Lavelle; Harrison, Emily; Michael Mendizabal
> Subject: RE: Milpitas OB Action Letter
>
> And the Board may well decide to put things on hold. However, these items have been put forward for placement on the Board's next agenda consistent with the process outlined in the adopted Rules and Procedures for setting the Agenda.
> Bruce
>
> -----Original Message-----
> From: Tom Williams [<mailto:twilliams@ci.milpitas.ca.gov>]
> Sent: Monday, November 05, 2012 3:42 PM
> To: Knopf, Bruce

> Cc: Mary Lavelle; Harrison, Emily; Michael Mendizabal; City Council; 'Don Gage'; Mike Ogaz; Bryan Otake; Emma Karlen
> Subject: RE: Milpitas OB Action Letter
>
> Bruce:
>
> I am placing these items on hold until we reconcile the funding issue. The administrative budget per ROPS 3 has already been allocated and committed per the 3% cap through June 30, 2013. I need to know how City staff will be paid if you reallocate funds away from the approved budget to outside legal counsel.
>
> Thomas C. Williams
> City Manager
> City of Milpitas
> (408) 586.3050
>
>
> -----Original Message-----
> From: Knopf, Bruce [<mailto:bruce.knopf@ceo.sccgov.org>]
> Sent: Monday, November 05, 2012 3:36 PM
> To: Tom Williams
> Cc: Mary Lavelle; Harrison, Emily; Michael Mendizabal
> Subject: RE: Milpitas OB Action Letter
>
> Tom,
> My emails this morning were directed to you or were copied to you.
> I and committee member Mike Mendizabal, have requested that two items be placed on the Agenda for the next Oversight Board meeting:
>
> "Reconsideration of Resolution Approving Contract for Legal Services with Miller & Owen."
>
> "Adoption of Resolution Amending Successor Agency Administrative Budget, consistent with Department of Finance Letter of November 1, 2012."
>
> Please confirm that these items will be placed on the agenda as they appear above.
> Bruce
>
> -----Original Message-----
> From: Tom Williams [<mailto:twilliams@ci.milpitas.ca.gov>]
> Sent: Monday, November 05, 2012 12:13 PM
> To: Knopf, Bruce
> Cc: City Council; Mike Ogaz; Bryan Otake; Mary Lavelle; Harrison, Emily
> Subject: FW: Milpitas OB Action Letter
> Importance: High

>
> Bruce:
>
> In the future, please do not direct City of Milpitas or Successor Agency staff to perform any duties without my authorization. If you have any requests please address those through my office and I will allocate resources as necessary and legally appropriate.
>
> Thomas C. Williams
> City Manager
> City of Milpitas
> (408) 586.3050
>
>
> -----Original Message-----
> From: Tom Williams
> Sent: Monday, November 05, 2012 12:06 PM
> To: 'Knopf, Bruce'; Mary Lavelle
> Cc: Nancy Miller; Mike Ogaz; Armando Gomez; Bryan Otake; dongage@verizon.net; Emma Karlen; Felix Reliford; Williams, Glen; Jane Corpus Takahashi; Marsha Grilli; Max Overland; michael.murdter@rda.sccgov.org; Michael Mendizabal; Phuong Le; Haggerty, Rebecca; Toby.Wong@doc.sccgov.org; tonye@legalaidsociety.org; City Council; Jennifer Gore
> Subject: RE: Milpitas OB Action Letter
> Importance: High
>
> Bruce:
>
> Pursuant to the law, as I understand it, you are not authorized to take such action. Mary, please do not proceed until we obtain a legal opinion.
>
> Thomas C. Williams
> City Manager
> City of Milpitas
> (408) 586.3050
>
> -----Original Message-----
> From: Knopf, Bruce [<mailto:bruce.knopf@ceo.sccgov.org>]
> Sent: Monday, November 05, 2012 11:58 AM
> To: Mary Lavelle
> Cc: Tom Williams; Nancy Miller; Mike Ogaz; Armando Gomez; Bryan Otake; dongage@verizon.net; Emma Karlen; Felix Reliford; Williams, Glen; Jane Corpus Takahashi; Marsha Grilli; Max Overland; michael.murdter@rda.sccgov.org; Michael Mendizabal; Phuong Le; Haggerty, Rebecca; Toby.Wong@doc.sccgov.org; tonye@legalaidsociety.org; City Council; Jennifer Gore
> Subject: Re: Milpitas OB Action Letter

>
> Mary
> Please also include an agenda item for "Adoption of Resolution Amending Successor Agency Administrative Budget."

>
> Thanks.

>
> Bruce Knopf
> Director
> Asset and Economic Development
> County of Santa Clara
> 408.219.9811
> Sent from my iPhone

>
>
> On Nov 5, 2012, at 11:42 AM, "Knopf, Bruce"
<bruce.knopf@ceo.sccgov.org<<mailto:bruce.knopf@ceo.sccgov.org>>> wrote:

>
> Tom,
> A revised resolution will be brought to the Oversight Board at the next meeting to approve the legal services contract with Miller & Owen consistent with the State Department of Finance letter of November 1, 2012.

>
> Mary,
> Would you please place on the next Agenda an item for "Reconsideration of Resolution Approving Contract for Legal Services with Miller & Owen."

> Bruce

>
> From: Tom Williams [<mailto:twilliams@ci.milpitas.ca.gov>]
> Sent: Monday, November 05, 2012 11:04 AM
> To: 'Nancy Miller'
> Cc: Mike Ogaz; Armando Gomez; Knopf, Bruce; Bryan Otake;
<dongage@verizon.net<<mailto:dongage@verizon.net>>; Emma Karlen; Felix Reliford;
Williams, Glen; Jane Corpus Takahashi; Marsha Grilli; Max Overland ;
<michael.murdter@rda.sccgov.org<<mailto:michael.murdter@rda.sccgov.org>>; Michael Mendizabal; Mike Ogaz; Phuong Le; Haggerty, Rebecca;
<Toby.Wong@doc.sccgov.org<<mailto:Toby.Wong@doc.sccgov.org>>;
<tonye@legalaidsociety.org<<mailto:tonye@legalaidsociety.org>>; City Council; Jennifer Gore; Bryan Otake
> Subject: RE: Milpitas OB Action Letter

>
> Thank you Nancy. Please be advised that neither the City of Milpitas, Milpitas Successor Agency nor Milpitas Economic Development Corporation will be responsible for the cost of any services rendered by your firm. The City of Milpitas uses its discretionary authority to not obligate itself for services rendered by your firm pursuant to §34173 (h). I agreed to a

cap of \$2,500 with the understanding from County Counsel and Board Member Knopf that the State Department of Finance would acknowledge payment of your costs on future ROPS. As you know, we received a letter from State DOF that indicates otherwise. As such, I am asking you to stop work since the City of Milpitas will not be reimbursed the \$2,500.

>
> Thank you and please let me know if you have questions.

>
> Thomas C. Williams
> City Manager
> City of Milpitas
> (408) 586.3050
> <image001.jpg>

>
> From: Nancy Miller [mailto:miller@motlaw.com]
> Sent: Friday, November 02, 2012 4:46 PM
> To: Tom Williams
> Cc: Mike Ogaz; Armando Gomez;
bruce.knopf@ceo.sccgov.org<mailto:bruce.knopf@ceo.sccgov.org>; Bryan Otake;
dongage@verizon.net<mailto:dongage@verizon.net>; Emma Karlen; Felix Reliford; Glen
Williams; Jane Corpus Takahashi; Marsha Grilli; Max Overland ;
michael.murdter@rda.sccgov.org<mailto:michael.murdter@rda.sccgov.org>; Michael
Mendizabal; Mike Ogaz; Phuong Le;
Rebecca.Haggerty@fin.sccgov.org<mailto:Rebecca.Haggerty@fin.sccgov.org>;
Toby.Wong@doc.sccgov.org<mailto:Toby.Wong@doc.sccgov.org>;
tonye@legalaidsociety.org<mailto:tonye@legalaidsociety.org>; City Council; Jennifer
Gore

> Subject: RE: Milpitas OB Action Letter

>
> Tom:

>
> Thank you for your email, but I represent the oversight board, and until they instruct me otherwise I will proceed with services as directed.

>
> Please feel free to call me if you have any questions.

>
> Best,
> Nancy

>
> Sent from my iPhone

>
> MILLER & OWEN
> A Professional Corporation

>
> Phone: (916) 447-7933

> Fax: (916) 447-5195

> *****

> The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this message in error, please contact the sender and delete the material from any computer.

>

>

> From: Tom Williams [<mailto:twilliams@ci.milpitas.ca.gov>]

> Sent: Friday, November 02, 2012 10:43 AM

> To: Nancy Miller

> Cc: Mike Ogaz; Armando Gomez; Bruce Knopf

(bruce.knopf@ceo.sccgov.org<<mailto:bruce.knopf@ceo.sccgov.org>>); Bryan Otake; Don

Gage (dongage@verizon.net<<mailto:dongage@verizon.net>>); Emma Karlen; Felix

Reliford; Glen Williams; Jane Corpus Takahashi; Marsha Grilli; Max Overland ; Michael

Murdter (michael.murdter@rda.sccgov.org<<mailto:michael.murdter@rda.sccgov.org>>);

Michael Mendizabal; Mike Ogaz; Phuong Le; Rebecca Haggerty

(Rebecca.Haggerty@fin.sccgov.org<<mailto:Rebecca.Haggerty@fin.sccgov.org>>); Toby

Wong (Toby.Wong@doc.sccgov.org<<mailto:Toby.Wong@doc.sccgov.org>>); Tony

Estremera (tonye@legalaidsociety.org<<mailto:tonye@legalaidsociety.org>>); City Council

> Subject: FW: Milpitas OB Action Letter

>

> Nancy:

>

> As a result of the attached letter from DOF, there are no funds available to pay for your legal services. As such, I would recommend that your firm stop work and not incur any costs associated with the Milpitas Oversight Board. Please contact me if you have any questions.

>

>

> Thomas C. Williams

> City Manager

> City of Milpitas

> (408) 586.3050

> <image001.jpg>

>

> From: Tom Williams

> Sent: Friday, November 02, 2012 10:15 AM

> To: Armando Gomez; Bruce Knopf

(bruce.knopf@ceo.sccgov.org<<mailto:bruce.knopf@ceo.sccgov.org>>); Bryan Otake; Don

Gage (dongage@verizon.net<<mailto:dongage@verizon.net>>); Emma Karlen; Felix

Reliford; Glen Williams; Jane Corpus Takahashi; Marsha Grilli; Max Overland ; Michael

Murdter (michael.murdter@rda.sccgov.org<<mailto:michael.murdter@rda.sccgov.org>>);

Michael Mendizabal; Mike Ogaz; Phuong Le; Rebecca Haggerty (Rebecca.Haggerty@fin.sccgov.org<<mailto:Rebecca.Haggerty@fin.sccgov.org>>); Toby Wong (Toby.Wong@doc.sccgov.org<<mailto:Toby.Wong@doc.sccgov.org>>); Tony Estremera (tonye@legalaidsociety.org<<mailto:tonye@legalaidsociety.org>>)

> Subject: FW: Milpitas OB Action Letter

>

> To Milpitas Oversight Board:

>

> The legal contract with Miller Owen was denied by DOF as an enforceable obligation item.

>

>

> Thomas C. Williams

> City Manager

> City of Milpitas

> (408) 586.3050

> <image001.jpg>

>

>

> From: Redevelopment Administration

[<mailto:RedevelopmentAdministration@dof.ca.gov>]

> Sent: Thursday, November 01, 2012 5:41 PM

> To: Emma Karlen; Jane Corpus Takahashi;

irene.lui@fin.sccgov.org<<mailto:irene.lui@fin.sccgov.org>>; 'RDA-

SDsupport@sco.ca.gov<<mailto:RDA-SDsupport@sco.ca.gov>>' (RDA-

SDsupport@sco.ca.gov<<mailto:RDA-SDsupport@sco.ca.gov>>)

> Subject: Milpitas OB Action Letter

>

> The Successor Agency to the Milpitas Redevelopment Agency notified the California Department of Finance of its October 23, 2012 Oversight Board (OB) resolution on October 30, 2012. Please see the attached letter for Finance's determination of the OB resolution No. 5.

>

> Department of Finance

> Redevelopment Agency Administration

>