

**Oversight Board Meeting  
of the Successor Agency City of Foster City**

**REGULAR MEETING**

**August 8, 2012; 8:00 a.m.**

Location:  
Council Chambers – Conference Room  
City of Foster City  
620 Foster City Blvd  
Foster City, CA

1. Call to Order
2. Public Comment
  - a. *This is an opportunity for the public to address the Oversight Board on any item that is not on the agenda. Time for public comment may be limited at the discretion of the Chair.*
3. Communications
4. Minute Approval
  - a. June 12, 2012
5. Reports
  - a. Report from Oversight Board Legal Counsel Craig Labadie regarding Passage of AB 1484 (Redevelopment Trailer Bill) and Impacts on Successor Agency and Oversight Board Actions
  - b. Update Regarding DOF Rejection of Sinking Fund Items on the July to December 2012 Recognized Obligation Payment Schedule
6. Resolutions for Adoption
  - a. A Resolution Approving a Loan Agreement between the City of Foster City and the Successor Agency in Accordance with the Provisions of California Health & Safety Code §34173(h)
  - b. A Resolution Authorizing the Successor Agency to Engage an Independent Certified Public Accountant to Conduct Agreed Upon Procedures on Low Moderate Income Housing Funds and All Other Fund and Account Balances
  - c. A Resolution Approving an Administrative Budget for the Period January 1, 2013 to June 30, 2013
  - d. A Resolution Approving a Recognized Obligation Payment Schedule for the Period January 1, 2013 to June 30, 2013
7. Old Business
8. New Business

## 9. Future Agenda Items

- a. Update on Status of Agreements Between Third Parties and the Former Agency (Recommended to be removed from future agendas as matter of law)
- b. Session to Hear and Consider Public Comment regarding Report from Independent Certified Public Accountant of Agreed-Upon Procedures on Low- and Moderate-Income Housing Funds (October 2012 – after October 1, before October 11, five days prior to Approval of Oversight Board)
- c. Approval of Report from Independent Certified Public Accountant of Agreed-Upon Procedures on Low- and Moderate-Income Housing Funds (October 2012 – due October 15)
- d. Quarterly Financial Update (November 2012)
- e. Approval of Report from Independent Certified Public Accountant of Agreed-Upon Procedures on All Other Fund and Account Balances (January 2013 – due January 15)
- f. Approval of an Administrative Budget for the Period July to December 2013 (February 2013 – due March 1)
- g. Approval of Recognized Obligation Payment Schedule for the Period July to December 2013 (February 2013 – due March 1)

## 10. Member Statements and Requests

### 11. Adjournment

Any attendee requiring special accommodations should contact Steve Toler, Assistant City Manager, at 650-286-3214 or [SToler@fostercity.org](mailto:SToler@fostercity.org) at least 24 hours in advance of the meeting.

Note: Any writings or documents provided to a majority of the Oversight Board regarding any item on this agenda after the agenda packet was distributed will be made available for public inspection at the office of the Assistant City Manager located at Foster City City Hall, 610 Foster City Blvd., Foster City, during normal business hours and also made available in a marked binder at current and future meetings.

**Oversight Board  
Successor Agency City of Foster City**

**Minutes**

Meeting Date:  
June 12, 2012, 8:00 a.m.

Foster City Council Chambers Conference Room  
620 Foster City Blvd., Foster City, CA 94404

Members Present: **Chair Dick W. Bennett, Members Tina Acree, Jim Keller,  
Linda Koelling, Elizabeth McManus, Rick Wykoff**

Members Absent: **Vice-Chair Mary McMillan**

Staff Present: **Steve Toler (Assistant City Manager / Secretary), Jim Hardy  
(City Manager), Curtis Banks (Community Development  
Director), Lin-Lin Cheng (Finance Director), Craig Labadie  
(Counsel to Oversight Board)**

1. Call to Order – **Meeting was called to order at 8:04 a.m.**
2. Public Comment – **None**
3. Communications – **None**
4. Minute Approval
  - a. May 9, 2012 – **Motion by Member Koelling, second by Member McManus, approving the minutes as presented. MOTION PASSED 6-0-1 (McMillan Absent)**
5. Resolutions for Adoption
  - a. A Resolution Amending the Recognized Obligation Payment Schedule for the Period January 1, 2012 to June 30, 2012
    - i. **Mr. Toler delivered the staff report. Discussion ensued. Motion by Member McManus, second by Member Koelling, adopting a resolution approving the ROPS for the Period January 1 to June 30, 2012. MOTION PASSED 6-0-1 (McMillan Absent)**
  - b. A Resolution Amending the Recognized Obligation Payment Schedule for the Period July 1, 2012 to December 31, 2012

- i. **Mr. Toler delivered the staff report. Discussion ensued. Motion by Member McManus, second by Member Koelling, adopting a resolution approving the ROPS for the Period July 1 to December 31, 2012. MOTION PASSED 6-0-1 (McMillan Absent)**

6. Reports

- a. Oral Update on Recommendation by Successor Agency of Consideration to Re-Enter Agreements with the City of Foster City
  - i. Cooperative Services Agreement
  - ii. Public Improvement Reimbursement Agreement
  - iii. Affordable Housing Reimbursement Agreement
    - 1. **Staff indicated to the Oversight Board that the City has elected to not pursue re-entering into any of the aforementioned agreements.**
    - 2. **Mr. Labadie provided background information to the Board relative to California Department of Finance actions taken on other agencies in regards to implementation of ABx1 26 and other agreements similar to the agreement between the City and the former Agency, discussed the status of pending legislation and its impacts that those may have on funds that are the subject of such agreements, and legal action being taken by cities in regards to those types of agreements.**
    - 3. **Chairman Bennett appreciated the City's integrity and approach in dealing with these agreements.**
- b. Oral Update on Redevelopment Property Tax Trust Funds (RPTTF) Distributions on May 16, 2012 and June 1, 2012
  - i. **Mr. Toler indicated that the County trued up RPTTF amounts due to or from various successor agencies. Foster City's agency owed funds due to prior non-payment of AB1290 payments owed to agencies that were paid by the County and that the City remitted the funds owed in advance of the May 16 due date. RPTTF funds due for the July to December 2012 ROPS period on June 1, 2012 were received in a timely fashion.**
- c. Oral Update on Legislation Affecting Successor Agencies

- i. **Mr. Toler indicated that the legislature was not entertaining any discussion on the redevelopment cleanup bills until the State budget issues were resolved.**
- ii. **Mr. Labadie provided additional perspective on the legislation and indicated that any legislation that comes from the State will likely be wrapped up in budget discussions and will require further analysis as changes get made to the legislation.**

d. Discussion on Future Meetings of the Oversight Board

- i. **Staff and Oversight Board members discussed the need for future meetings. It was determined that the regular meetings will stay on everyone's calendars, but that the July meeting might likely be cancelled given little, if any, business that would be required to be conducted at that time.**

7. Old Business – **None**

8. New Business – **None**

9. Future Agenda Items

- a. Update on Status of Agreements Between Third Parties and the Former Agency (To Be Scheduled)
- b. Quarterly Financial Update (November 2012)
- c. Approval of Administrative Budget for January to June 2013 (November 2012)
- d. Approval of Recognized Obligation Payment Schedule for the Period January to June 2013 (November 2012)

10. Member Statements and Requests

- a. **Member Wykoff indicated he would likely be out of town during the period November 5 to November 20.**
- b. **Member Wykoff indicated his dissatisfaction in the State Legislature being able to address its most pressing priorities based on certain legislation that was and was not passed thus far in this legislative calendar.**

- c. **Chair Bennett was complimentary of Successor Agency staff's integrity and quality work being performed on behalf of the Oversight Board.**

11. **Adjournment – Meeting was adjourned at 8:45 a.m.**

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## Memorandum

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**TO:** Foster City Oversight Board Members  
**FROM:** Craig Labadie, Legal Counsel to Oversight Board  
**DATE:** August 3, 2012  
**RE:** Update on Redevelopment Dissolution Legislation

On June 27, the State Legislature passed a Budget Trailer Bill (AB 1484) which made extensive changes to the Redevelopment Dissolution Law (AB1x 26). This new legislation became effective immediately upon enactment. Attached for the Oversight Board's review are copies of the following: (1) a letter from the State Department of Finance summarizing key AB 1484 deadlines; (2) a brief outline of the major provisions of AB 1484 and the new deadlines it established, prepared by the League of California Cities; and (3) a more comprehensive summary prepared by Goldfarb Lipman, a leading redevelopment and affordable housing law firm. If the past experience with AB1x 26 is any indication, it will take some time to fully analyze this complex new legislation and determine how it is to be implemented for the various issues facing Oversight Boards and Successor Agencies throughout California.

However, it is apparent at the outset that AB 1484 has significant implications for the Foster City Oversight Board. Based upon a preliminary review of the new law, here are some of the major changes affecting the Board's responsibilities:

- The third ROPS, covering the time period from January 1, 2013 through June 30, 2013 must be adopted by the Oversight Board and transmitted to the Department of Finance no later than September 1, 2012. The City is subject to a civil penalty of \$10,000 per day for an untimely submittal. If the deadline is missed by more than 10 days, the maximum administrative cost allowance must be reduced by 25%. DOF will have an extended review period of up to 45 days.
- The Successor Agency is required to undertake a two-stage audit process to determine the unencumbered LMIHF and RDA fund balances which are available for distribution to local taxing entities. The results of this financial review are to be submitted to the Oversight Board, the County Auditor-Controller and the DOF by October 1, 2012 as to the LMIHF. The Oversight Board must review and approve the audit results by October 15, 2012. As to the RDA fund, the corresponding deadlines are December 15, 2012 and January 15, 2013. For

each of these reviews, the Oversight Board must hold a meeting to receive public comment at least five business days prior to the meeting where it takes its approval action. DOF will issue a Finding of Completion after this financial review process is concluded.

- After issuance of a Finding of Completion, a City-RDA loan agreement can be treated as an enforceable obligation of the Successor Agency if the Oversight Board makes a finding that the loan was made for legitimate redevelopment purposes. Additional requirements apply to this type of loan:
  - Accumulated interest on the loan is to be calculated at the LAIF rate from the date of loan origination.
  - The loan is to be repaid over a "reasonable period of years" with future interest also at the LAIF rate, but repayment cannot begin until Fiscal Year 2013-14.
  - The maximum annual repayment amount is limited by a statutory formula to 50% of the increase in distributions to the taxing entities above the amount distributed in the 2012-13 base year.
  - 20% of repayment amounts received by the City must be deposited into a newly created Low and Moderate Income Housing Asset Fund ("LMIHAF") administered by the housing successor agency.

These new "safe harbor" provisions are now the exclusive method for re-establishing loan agreements between the Successor Agency and the City.

- After issuance of a Finding of Completion, disposition of non-housing properties owned by the former RDA can proceed in accordance with a Long-Range Property Management Plan approved by the Oversight Board and DOF. Ultimately, former RDA properties may be retained for governmental use, retained for future development in accordance with the redevelopment plan, used to fulfill an enforceable obligation, or sold.
- Additional flexibility is provided to allow a Successor Agency to refund bonds issued by the former RDA, in order to reduce long-term debt service costs.
- Pre-disposition carrying costs incurred by the Successor Agency with respect to real property may be listed on the ROPS as enforceable obligations, separate from the administrative cost allowance. The same is true for expenses relating to ongoing construction projects. The Oversight Board is authorized to reduce the annual administrative cost allowance below the \$250,000 statutory minimum.
- A Successor Agency may borrow funds from the City to pay for administrative costs, enforceable obligations or project-related expenses. The receipt and use of these funds must be reflected in a ROPS or administrative budget approved by the Oversight Board.



- All actions taken by the Oversight Board must be adopted by resolution.
- The Oversight Board is expressly authorized to: (a) direct the Successor Agency to provide additional legal or financial advice beyond that given by Successor Agency staff, and (b) contract with the County or another agency for administrative support.

Please feel free to contact me if you have any additional questions or if you would like any further information about any of the matters covered in this memorandum.



## Major Provisions of AB 1484<sup>1</sup>

### 1. **Three payments:** Successor agency must make three payments:

- July 12: Taxing entities' share of December 2011 property tax distribution to redevelopment agency/successor agency
- November 28: Low-Moderate Income Housing Fund
- April 10: Unencumbered cash

In addition to these three payments, if a successor agency did not make complete 2011-12 pass-through payments, amount of payment not made will be deducted from property tax distribution from auditor-controller.<sup>2</sup>

### 2. **New audit by October 1:** Successor agency must retain licensed accountant to audit books:<sup>3</sup>

- Audit of LMIHF
- Audit of cash assets
- Audit of cash transfers to public agencies and private parties<sup>4</sup>

### 3. **New penalties:**

- Failure to make July 12 payment: successor agency subject to civil penalty of 10% of the amount owed plus 1.5% of the amount owed for each month that payment is not made unless DOF finds that payment of penalty will jeopardize payment of enforceable obligations. Until payment is made,

<sup>1</sup> This initial Draft summary of AB 1484 was prepared by the League's Special Counsel, Betsy Strauss, on June 28, 2012, with the objective of providing something quickly to city officials. The League will continue to refine this analysis with the assistance of its RDA Attorney Working Group and other city officials.

<sup>2</sup> Additional information about these payments is found in the Appendix.

<sup>3</sup> Agreed-upon procedures audit completed by auditor-controller can substitute for the licensed accountant audit if it includes all statutory requirements

<sup>4</sup> Successor agency must attempt to recover cash transferred to public agency without an enforceable obligation.

successor agency may only pay bond debt. City subject to same civil penalty. City will not receive July 18 sales tax payment (up to amount owed).<sup>5</sup>

- Failure to transfer LMIHF funds: Offset of city sales tax or property tax of the amount required to be transferred<sup>6</sup>
- Failure to transfer cash assets: Offset of city sales tax or property tax of the amount required to be transferred<sup>7</sup>
- Failure to recover cash transferred to local agency without enforceable obligation: Offset of sales tax or property tax of the local agency to which the cash was transferred.<sup>8</sup>
- Failure to submit ROPS by September 1, 2012 and subsequent deadlines: City to pay civil penalty of \$10,000 per day for each day beyond deadline

#### 4. Safe Harbor: Finding of Completion<sup>9</sup>

The Department of Finance will issue a finding of completion to a successor agency that pays the following amounts:

- ✓ The amount determined in the audit of the LMIHF<sup>10</sup>
- ✓ The amount determined in the audit of all other funds<sup>11</sup>
- ✓ The amount (if any) owing to taxing entities from the December 2011 property tax payment<sup>12</sup>

The following applies to a successor agency that is issued a finding of completion:

- ✓ Loan agreements entered into between the redevelopment agency and the city are deemed to be enforceable obligations if oversight board makes a finding that loan was for legitimate redevelopment purposes. As enforceable obligations, payments are listed on ROPS<sup>13</sup>.

Repayments of loans may not begin prior to 2013-14 fiscal year at maximum amount described in statute. Repayment amounts received by city must first be used to retire outstanding amounts borrowed and owed to LMIHF of the

<sup>5</sup> Section 34183.5(b)(2)

<sup>6</sup> Section 34179.6(h)

<sup>7</sup> Section 34179.6(h)

<sup>8</sup> Section 34179.6(h); see, also 34179.8

<sup>9</sup> Section 34191.1.

<sup>10</sup> Section 34179.6

<sup>11</sup> Section 34179.6

<sup>12</sup> Section 34183.5

<sup>13</sup> DOF continues to retain final authority to approve items listed on ROPS.

former redevelopment agency for purposes of the SERAF payment. 20% of loan repayment amount must be transferred to LMIH Asset Fund.<sup>14</sup>

- ✓ Bond proceeds derived from bonds issued on or before 12/31/10 shall be used for the purposes for which the bonds were sold. Proceeds which cannot be spent consistent with bond covenants shall be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.<sup>15</sup> Use of bond proceeds listed on ROPS.<sup>16</sup>
- ✓ Real property assets: In lieu of the provisions of AB 26 which require disposal of real property assets at the direction of the oversight board, successor agency prepares a long-range property management plan and submits to oversight board and DOF for approval. Permissible uses of property include retention for governmental use; retention for future development; sale of property; use of the property to fulfill enforceable obligations. If plan directs use or liquidation of property for a project identified in an approved redevelopment plan, the property shall transfer to the city. No transfers until plan approved by oversight board and DOF.<sup>17</sup>
- ✓ Statute of Limitations: The longer statutes of limitations (2 years) to challenge actions of the former redevelopment agencies do not apply.<sup>18</sup>

## **5. New Power of State Controller<sup>19</sup>**

AB 1484 directs the Controller to review the activities of successor agencies to determine whether an asset transfer occurred after January 31, 2012, between the successor agency and the city or county that created the redevelopment agency, or any other public agency that was not pursuant to an enforceable obligation on an approved ROPS. The Controller is directed to order the assets returned to the successor agency. "City" is defined very broadly to include any entity which is controlled by the city or for which the city is financially responsible or accountable.<sup>20</sup>

## **6. Increase in authority for Department of Finance**

- DOF may eliminate or modify any item on an oversight board-approved ROPS. The auditor-controller must distribute property tax in accordance with changes made to the ROPS by DOF. If successor agency disputes DOF

<sup>14</sup> 34191.4(b)(2).

<sup>15</sup> 34191.4(c)

<sup>16</sup> DOF continues to retain final authority to approve items listed on ROPS.

<sup>17</sup> Section 34191.5

<sup>18</sup> Section 33500, 33501

<sup>19</sup> Section 34178.8

<sup>20</sup> Section 34167.10. AB 26 directed the State Controller to review asset transfers from redevelopment agencies to the city or county that created the agency that occurred after January 1, 2011. If the city or county was not contractually committed to a third party for the expenditure or encumbrance of those assets, the Controller was directed to order the return the assets to the redevelopment agency or successor agency.

action, disputed item may be carried on ROPS. If dispute resolved in favor of successor agency in the future, the past allocation of property tax to the successor agency is not changed nor is a “liability” created for any affected taxing entity.<sup>21</sup>

- DOF may review and object to oversight board actions approving (1) establishment of new repayment terms for outstanding loans; and (2) setting aside amounts in reserves as required by bond indentures, and similar documents<sup>22</sup>

## **7. New restrictions on authority of Successor agency**

- No new enforceable obligations except (1) as specifically authorized by the statute; (2) in compliance with enforceable obligations that existed prior to June 28, 2011; or (3) to hire staff, acquire professional services and procure insurance.<sup>23</sup>
- May not transfer revenues or powers to any other public or private party except pursuant to enforceable obligation on an approved ROPS. Any such transfer of authority or revenues are “void” and successor agency required to reverse transfers. Controller may audit and order return of transfers of authority or revenues.<sup>24</sup>
- Actions taken by redevelopment agencies pursuant to VARP (Voluntary Alternative Redevelopment Program in AB 27) are “ultra vires” and do not create enforceable obligations.<sup>25</sup>
- If successor agency exercised power to reenter into agreements with city (section 34178) and agreement was approved by oversight board but rejected by DOF, successor agency and oversight board may not act to restore funding for the reentered agreement.<sup>26</sup>
- No reestablishment of loan agreements between successor agency and city except pursuant to safe harbor provisions.<sup>27</sup>

## **8. Miscellaneous**

- City loans to successor agency: City may loan or grant funds for administrative costs, enforceable obligations or project-related expenses. Receipt and use of these funds shall be reflected on the ROPS or in the

<sup>21</sup> Section 34179(h)

<sup>22</sup> Section 34181(f)

<sup>23</sup> Section 34177.3(a); 34177.3(b)

<sup>24</sup> Section 34177.3(c)

<sup>25</sup> Section 34177.3(d)

<sup>26</sup> Section 34178(a)

<sup>27</sup> Section 34180(a)

administrative budget subject to oversight board approval. An enforceable obligation is created for repayment of loans.<sup>28</sup>

- New Oversight Board Provisions<sup>29</sup>
  - ✓ Auditor-controller may determine “largest special district”
  - ✓ Section 1090 does not apply to employee representative on oversight board
  - ✓ Oversight board members are protected by immunities applicable to public entities and public employees
  - ✓ Written notice and information about all oversight board actions must be provided to DOF by electronic means. DOF has 40 (instead of 10) days to review and approve, reject, or modify oversight board action.
  - ✓ Oversight board may direct successor agency to provide additional legal or financial advice.
  - ✓ Authorized to contract with the county or other public or private agencies for administrative support
  - ✓ On matters within its purview, decisions made by oversight board “supersede those made by the successor agency or the staff of the successor agency.”<sup>30</sup>
- New authority for auditor-controller<sup>31</sup>: A county auditor-controller can object to an item on the ROPS or to the funding source listed for an item on the ROPS. Objections are sent to DOF to resolve.
- Polanco Act protection for successor agency: Cleanup plans and liability limits of redevelopment agency transferred to successor agency and to housing entity, upon entity’s request.<sup>32</sup>
- Limited authority for successor agency to refinance existing debt.<sup>33</sup>
- Successor agency is separate public entity.<sup>34</sup>

## **Appendix – Successor Agency Required Payments/Fund Transfers**

<sup>28</sup> Section 34175(h)

<sup>29</sup> Section 34180

<sup>30</sup> Section 34179

<sup>31</sup> Section 34182.5

<sup>32</sup> Section 34173(f)

<sup>33</sup> Section 34177.5

<sup>34</sup> Section 34173(g)

✓ **Transfer of Unencumbered Balances**<sup>35</sup>

AB 26 requires that a successor agency transfer unencumbered cash balances and low and moderate income housing funds to the county auditor-controller for distribution to the taxing entities. AB 1484 requires a successor agency to retain the services of a licensed accountant to audit (1) the balance in the LMIHF; (2) the balance in other cash funds; (3) cash payments that were made in compliance with an enforceable obligation; and (4) cash transfers that were made without an enforceable obligation. In addition to transferring the balances in the LMIHF and other cash funds, a successor agency must make efforts to recover the cash transferred without an enforceable obligation.

✓ **Payment of December 2011 Taxing Entity Property Tax**<sup>36</sup>

AB 26 distributes property tax through a “waterfall” of payments which includes passthrough payments, payments to successor agencies for enforceable obligations, payments to successor agencies for administrative costs, and payments to taxing entities. The waterfall for the December 2011 property tax payment did not operate as intended because of the stay imposed by the Court in *Matosantos*. The property tax payment to taxing entities was not made. AB 1484 requires successor agencies to make those payments by July 12.

✓ **Payment of 2011-12 Passthrough Payments**

Some successor agencies made 2011-12 passthrough payments and some did not. AB 1484 requires the auditor-controller to reduce property tax payments to those successor agencies that did not make pass through payments in 2011-12.

<sup>35</sup> Section 34179.5; 34179.6

<sup>36</sup> Section 34183.5



### AB 1484: Important Dates

- July 9: County auditor-controller notifies successor agency of amount of funds owing taxing entities based upon December 2011 property tax payment<sup>1</sup>
- July 12: Successor agency must make payment to auditor-controller for deposit into Redevelopment Property Tax Trust Fund and distribution to taxing entities.<sup>2</sup>
- July 16: Auditor-controller distributes money received from successor agencies to taxing entities. Monies received after July 12 date distributed within 5 days of receipt.<sup>3</sup>
- July 18: **City sales tax payment suspended if successor agency doesn't make July 12 payment.**<sup>4</sup>
- August 1: Successor housing entity must submit to DOF a list of housing assets that contains explanation of how assets meet criteria set forth in the law. DOF will prescribe format for list. DOF may object to any of the assets within 30 days. If after meet and confer, DOF continues to object, asset must be returned to the successor agency.<sup>5</sup>
- September 1: ROPS for January 1, 2013 through June 30, 2013 must be submitted electronically to DOF after oversight board approval.<sup>6</sup> DOF makes determinations within 45 days. Within 5 days of determination, successor agency may request additional review and meet and confer.
- October 1: Successor agency submits to oversight board, county auditor-controller, State Controller, and DOF results of the review of the LMIHF conducted by the licensed accountant agency must retain.<sup>7</sup> Note: licensed accountant must be approved by the county auditor-controller.

<sup>1</sup> Section 34183.5(b)(2)(A). Note: The statute, that may be drafted in error, states that if June 1 property tax payment has not been made to successor agencies, the amount owing to taxing entities will be deducted from that same June 1 payment (34183.5(b)(1)).

<sup>2</sup> Section 34183.5(b)(2)(A).

<sup>3</sup> Section 34183.5(b)(2)(A).

<sup>4</sup> Section 34183.5(b)(2)(A)

<sup>5</sup> Section 34176(a)(2). Definition of "housing asset" found at section 34176(e).

<sup>6</sup> Section 34177(m). Future ROPS must be submitted to DOF 90 days prior to property tax distribution. **City subject to civil penalty of \$10,000 per day for successor agency's failure to timely submit ROPS (Section 34177(m)(2)).**

<sup>7</sup> Section 34179.6(a). The requirement to retain a licensed accountant is found in section 34179.5. The audit provided by the county auditor-controller can be substituted for an audit by a licensed accountant if it contains the information required by Section 34179.5.

- October 1: County auditor-controller completes agreed-upon procedures audit of each redevelopment agency.<sup>8</sup> Auditor-controller provides estimate of property tax payments to successor agency for upcoming six-month period.<sup>9</sup>
- October 15: Oversight Board must review, approve, and transmit LMIHF audit to DOF, auditor-controller.<sup>10</sup>
- November 9: DOF completes review of LMIHF audit and reports findings, determinations, and decision to overturn oversight board decision to allow retention of successor agency assets.<sup>11</sup>
- November 16: Successor agency may request meet and confer to resolve disputes with DOF findings on LMIHF audit.<sup>12</sup> DOF must confirm or modify its determination and decisions within 30 days.
- November 28: Successor agency to transfer LMIHF funds to auditor-controller. **City sales tax/property tax may be offset for unfunded amounts.**
- December 15: Successor agency submits to oversight board, county auditor-controller, State Controller, and DOF results of the review of all other fund and account balances by licensed accountant.<sup>13</sup>
- January 15: Oversight board must review, approve, and transmit other funds audit to DOF, auditor-controller.<sup>14</sup>
- April 1: DOF completes review of other funds audit and reports findings, determinations, and decision to overturn oversight board decision to allow retention of successor agency assets.<sup>15</sup>
- April 1: County auditor-controller provides estimate of property tax payments to successor agency for upcoming six-month period.<sup>16</sup>
- April 6: No later than 5 days after receiving DOF determination on other funds audit, successor agency may request meet and confer to resolve disputes with DOF findings. DOF must confirm or modify its determination and decisions within 30 days.
- April 10: Successor agency to transfer other “cash and assets” audit payment to auditor-controller if meet and confer process complete.<sup>17</sup> **City sales tax/property tax may be offset for unfunded amounts.**

<sup>8</sup> Section 34182(a)(1).

<sup>9</sup> Section 34182(c)(3)

<sup>10</sup> Section 34179.6(c)

<sup>11</sup> Section 34179.6(d)

<sup>12</sup> Section 34179.6(e)

<sup>13</sup> Section 34179.6(a).

<sup>14</sup> Section 34179.6(a).

<sup>15</sup> Section 34179.6(a)

<sup>16</sup> Section 34182(c)(3)

Safe Harbor: Successor agencies obtaining a “notice of completion” from DOF will qualify for loan repayments, bond proceeds expenditure authority to be placed on ROPS<sup>18</sup>, and long range asset management plan.

<sup>17</sup> Section 34179.6(f). The statute does not allow sufficient time between completion of DOF review on April 1 and required payment on April 10.

<sup>18</sup> DOF continues to retain final authority to approve items listed on ROPS





July 11, 2012

## TO REDEVELOPMENT SUCCESSOR AGENCY REPRESENTATIVES

As part of our ongoing effort to work with Successor Agencies on the implementation of Assembly Bill 26, First Extraordinary Session (ABx1 26), the Department of Finance (Finance) would like to advise you of several new responsibilities and deadlines implemented by the recently enacted Assembly Bill 1484 (AB 1484, Chapter 26, Statutes of 2012). Specifically, AB 1484 establishes a catch-up process for revenues distributed in 2011-12. Going forward, AB 1484 expands the review time and creates a meet-and-confer process for future substantial's and processes. The measure also establishes incentives for compliance and penalties for noncompliance effective July 2012. These changes are described below, and Finance's website will continue to be updated to provide the most current information available.

### **2011-12 Catch-Up Process**

AB 1484 establishes a catch-up process for the distribution of 2011-12 property taxes associated with the dissolution of redevelopment agencies. The timeline is short to ensure that the allocation of last year's revenues is quickly resolved.

- By July 9, 2012, county auditor-controllers must calculate the amount of residual property tax revenue that Successor Agencies owe to cities, counties, special districts, and K-14 schools (collectively known as Affected Taxing Entities) for the period covered by the January 2012 through June 2012 Recognized Obligation Payment Schedule (ROPS). These calculations are based on the information reported by the Successor Agencies on the January 2012 through June 2012 ROPS.
- By July 12, 2012, Successor Agencies must remit to the county auditor-controller the residual property tax revenue identified in the aforementioned billing.
- By July 16, 2012, county auditor-controllers must distribute to the Affected Taxing Entities the residual property tax revenue remitted by the Successor Agencies.

### **2012-13 and Future Processes**

AB 1484 extends the time available for Finance to review Successor Agency submittals. In addition, for each submittal, it creates the option of a meet-and-confer process for Agencies to appeal Finance decisions beginning with the first deliverable for 2012-13. These new procedures will provide significantly more opportunities to discuss the specific details of each Agency's submittals.

- By August 1, 2012, Housing Successor Agencies must provide Finance a list of all housing assets transferred to it by the Successor Agency since February 1, 2012. A template for Housing Successor Agencies to use in reporting this information will soon be posted on the Finance website. AB 1484 provides Finance 30 days to review the list, and to question any transfers.

- By September 1, 2012, Successor Agencies must provide Finance with an Oversight Board-approved ROPS covering the January 2013 through June 2013 period. Finance will have 45 days to review the ROPS, and to object to any items that do not meet the definition of an Enforceable Obligation.
- By October 1, 2012, Successor Agencies must provide Finance an Oversight Board-approved Due Diligence Review that has been prepared by a licensed accountant. This Due Diligence Review will list all encumbered and unencumbered low-and-moderate income housing fund (low-mod fund) assets, and will state whether or not those assets are encumbered by Enforceable Obligations. Finance has until November 9, 2012 to finalize its review of the submittals, and to determine which low-mod fund assets are not encumbered by Enforceable Obligations.
- By January 15, 2013, Successor Agencies must provide Finance a second Oversight Board-approved Due Diligence Review that has been prepared by a licensed accountant. This Due Diligence Review will list all encumbered and unencumbered assets of the Successor Agency that are from sources other than the low-mod fund. The Due Diligence Review also will state whether or not those assets are encumbered by Enforceable Obligations. Finance has until April 1, 2013 to finalize its review of the submittals, and to determine which assets are not encumbered by Enforceable Obligations.

### **Incentives and Penalties**

Once a Successor Agency has complied with the July payment process and the asset transfer provision, AB 1484 provides certain benefits to the Successor Agencies, and also to the cities and counties that operate those Agencies. These benefits are as follows:

- The city or county may be eligible to receive repayment of sums loaned to their former redevelopment agency (RDA) more than two years after the former RDA was created. Under ABx1 26, loans made by a city or county to its former RDA more than two years after it was created are generally ineligible for repayment.
- The city or county may be eligible to receive title to certain real properties of the former RDA, and use those properties for purposes outlined in the redevelopment plan of the former RDA. Under ABx1 26, those real properties must be liquidated, with the sales proceeds distributed to the Affected Taxing Entities.
- The Successor Agency may be eligible to use for their intended purpose the proceeds from certain bonds that were not contractually obligated before ABx1 26 was enacted. Under current law, those bond proceeds only can be used to defease the bonds.

To help ensure that counties, cities, special districts, schools, and community colleges are receiving the appropriate level of revenues, AB 1484 allows strict civil penalties to be imposed if Successor Agencies fail to remit revenues on time. These civil penalties are as follows:

- The city or county that operates the Successor Agency shall be subject to civil penalties equal to: (a) 10 percent of the residual property tax owed the Affected Taxing Entities and (b) a monthly penalty of 1.5 percent of the amount owed the Affected Taxing Entities while the payments are late.

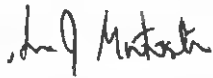
- The Successor Agency itself shall be subject to civil penalties equal to: (a) 10 percent of the residual property tax owed the Affected Taxing Entities and (b) a monthly penalty of 1.5 percent of the amount owed the Affected Taxing Entities while the payments are late.

The Successor Agency also would be prohibited from making any future ROPS payments while the owed amount is outstanding, other than those ROPS payments needed for bond debt service.

- The city or county that operates the Successor Agency shall be subject to interruption of their monthly Sales and Use Tax remittance from the Board of Equalization until the owed amounts are paid.

We hope this information is helpful. If you have follow up questions, you can reach Finance at (916) 445-1546.

Sincerely,



ANA MATOSANTOS  
Director

cc: County Auditor-Controllers

icc: REYES, COHEN, ROCKWELL, JERUE, SHELTON, C. HILL, MONROE, STACY, FILE

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# goldfarb lipman attorneys

Oakland Los Angeles San Diego

## SUMMARY OF AB 1484: REDEVELOPMENT DISSOLUTION/ UNWIND TRAILER BILL

JUNE 29, 2012

*The laws described below could be impacted by future cleanup legislation. Goldfarb & Lipman intends to update this summary as appropriate, but please contact us to get the most up-to-date information on the status and content of this legislation.*

Goldfarb & Lipman LLP  
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**SUMMARY OF AB 1484:  
REDEVELOPMENT DISSOLUTION/UNWIND TRAILER BILL**

**PART I.  
INTRODUCTION AND BACKGROUND**

**A. Introduction; Purpose of Summary.**

ABx1 26 (the "Dissolution Act") was enacted in late June 2011 as part of the FY 2011-12 state budget package and was held by the California Supreme Court to be largely constitutional on December 29, 2012. Under the Dissolution Act, each of California's redevelopment agencies (each a "Dissolved RDA") was dissolved as of February 1, 2012, and the cities, counties, and city and county that formed the Dissolved RDAs, together with other designated entities, have initiated the process under the Dissolution Act to unwind the affairs of the Dissolved RDAs.

As part of the FY 2012-13 state budget package, on June 27, 2012, the Legislature passed and the Governor signed AB 1484, the primary purpose of which is to make technical and substantive amendments to the Dissolution Act based on experience to-date at the state and local level in implementing that act. As a budget "trailer bill," AB 1484 took immediate effect upon signature by the Governor.

AB 1484 will require those involved in the redevelopment unwind process to learn and implement some significant new rules of conduct just as they were beginning to adapt to and implement the complex rules mandated by the Dissolution Act itself. The purpose of this Summary is to highlight the key elements of AB 1484 for those involved in the redevelopment unwind process. Following a background synopsis of the Dissolution Act in this Part I, Part II of the Summary describes key features of AB 1484, while Part III provides a checklist Summary of major new upcoming milestones mandated by AB 1484.

**We recommend particular attention to the Part III milestones checklist, as AB 1484 has added significant new or modified actions and deadlines, with major compliance consequences, that need to be implemented in the very near future and throughout the Summer and Fall of 2012.**

Because AB 1484 was enacted less than two days after it first appeared in bill form, there has been no time for questions of interpretation and practice to be carefully evaluated by state and local officials charged with the redevelopment unwind process. Consequently, the highlights presented in this Summary represent a good faith initial understanding of the meaning and intent of AB 1484, with the expectation and plan that this Summary will be updated from time to time as further consideration and practice shed light on the proper interpretation of various elements of the bill. Please visit our website at [www.goldfarblipman.com](http://www.goldfarblipman.com) to review future updates of this Summary.

This document is a summary of complex legislation. Reference should be made to the actual statutory language before making decisions or taking actions pursuant to AB 1484. Unless otherwise noted, section references in this Summary are to sections of the Health and Safety Code as added or amended by AB 1484. Reference to a "Part" is to the referenced Part of this Summary.

B. Overview Of Dissolution Act.

Under the Dissolution Act:

1. The authority of Dissolved RDAs to undertake most new activities was suspended as of the effectiveness of the Dissolution Act.
2. Each Dissolved RDA went out of existence on February 1, 2012.
3. A successor agency (a "Successor Agency") was created for each Dissolved RDA and charged with winding down the Dissolved RDA's affairs, including making payments due for enforceable obligations (as defined in the Dissolution Act), performing obligations required pursuant to enforceable obligations, disposing of the Dissolved RDA's assets (other than housing assets), and remitting unencumbered balances of the Dissolved RDA to the county auditor-controller (the "CAC") for distribution to the affected taxing entities. Except for certain housing assets, the assets of the Dissolved RDA transferred to the Successor Agency for this unwinding process.
4. For all but eight of California's Dissolved RDAs, the city, county, or city and county that had formed the Dissolved RDA (the "Sponsoring Community") elected to take on the role of Successor Agency for its Dissolved RDA.
5. Housing assets (other than unencumbered fund balances in the Dissolved RDA's Low and Moderate Income Housing Fund (the "LMIHF") at the time of dissolution, which were instead transferred to the Successor Agency), housing obligations and housing functions of the Dissolved RDA were transferred to a designated housing successor entity (the "Housing Successor"), which in most cases is the Sponsoring Community (and in a limited number of cases is a local housing authority).
6. The CAC is charged with establishing a Redevelopment Property Tax Trust Fund (the "RPTTF") for each Successor Agency and depositing into the RPTTF for each six-month period the amount of property taxes that would have been redevelopment property tax increment had the Dissolved RDA not been dissolved. Semiannually, the CAC is required to make distributions from the RPTTF (a) to the affected taxing entities in the amount of the pass-through payments they would have received had the Dissolved RDA not been dissolved, (b) to the Successor Agency to pay amounts due on enforceable obligations for the upcoming six-month period, and (c) to various entities for specified administrative costs. Any amount left in the RPTTF after each semiannual distribution for the above purposes is distributed by the CAC to the affect taxing entities as normal property taxes.

7. An oversight board (the "Oversight Board") is established for each Successor Agency to approve specified actions and direct specified activities of the Successor Agency.

8. A recognized obligation payment schedule is prepared by the Successor Agency and approved by the Oversight Board setting forth the amounts due for each enforceable obligation during each six-month period (each, a "ROPS"). The Successor Agency is limited to making payments for items shown on an approved ROPS (except that, pending effectiveness of the first ROPS, a Successor Agency is authorized to make payments for amounts on an Enforceable Obligation Payment Schedule (the "EOPS") prepared by the Dissolved RDA prior to dissolution, and subject to update by the Successor Agency).

9. The Department of Finance (the "DOF") and the State Controller's office (the "SCO") are given specified review and approval responsibilities and are assigned certain other tasks in connection with the redevelopment dissolution and unwind process under the Dissolution Act.

## PART II. SUMMARY OF AB 1484

### A. Affordable Housing.

AB 1484 significantly modifies and provides some clarifications to the treatment of housing assets under the Dissolution Act. Specifically, AB 1484 now includes a definition of housing assets, sets forth explicit procedures with respect to transfer of housing assets which must occur by August 1, 2012, provides some greater flexibility and procedural steps regarding the use of housing bond proceeds, establishes a new Low and Moderate Income Housing Asset Fund (the "Housing Asset Fund") to be administered by the Housing Successor, and clarifies that no future deposits are required to be made to the LMIHF.

1. Definition of Housing Assets. Section 34176(e) sets forth a list of assets that are considered housing assets. This is important because the Dissolution Act, as modified by AB 1484, treats both the Housing Successor and housing assets with more flexibility than the Successor Agency and non-housing assets. The list of housing assets in AB 1484 significantly expands the limited list of housing assets announced in the DOF Housing Frequently Asked Questions issued earlier this year (the "Housing FAQs"), due in large part to the efforts of several housing policy groups. The list of housing assets includes the following:

a. Real Property Assets. Housing assets include any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences, including furniture and appliances, all housing-related files and loan documents, office supplies, software licenses, and mapping programs, that were acquired for low- and moderate-income housing purposes, either by purchase or through a loan, in whole or in part, with any source of funds.

b. Encumbered Funds. Housing assets include any funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing,

as defined by the Community Redevelopment Law unless required in the bond covenants to be used for repayment purposes of the bond.

c. Loan or Grant Receivables. Housing assets include any loan or grant receivable, funded from the LMIHF, from homebuyers, homeowners, nonprofit or for-profit developers, and other parties that require occupancy by persons of low or moderate income as defined by the Community Redevelopment Law.

d. Rents and Payments from Operations. Housing assets include any funds derived from rents or operation of properties acquired for low- and moderate-income housing purposes by other parties that were financed with any source of funds, including residual receipt payments from developers, conditional grant repayments, cost savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

e. Rent and Payments from Operations Used to Maintain Affordability or for Affordable Housing-Related Enforceable Obligations. Housing assets include a stream of rents or other payments from housing tenants or operators of low- and moderate-income housing financed with any source of funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low- and moderate-income housing.

f. Amounts Owed to LMIHF. Repayment of amounts previously borrowed from, or owed to, the LMIHF (i.e. to make Supplemental Educational Revenue Augmentation Fund (“SERAF”) payments in prior years), repayment of which had been deferred as of the effective date of the Dissolution Act, are considered housing assets. The repayments can only be made pursuant to a schedule that must be approved by the Oversight Board. The repayments cannot start before FY 2013-14 and the maximum annual repayment is strictly limited by statutory formula. The repayments related to the SERAF (as opposed to other amounts owed to the LMIHF for other reasons) must be made before specified loan repayments to the Sponsoring Community that are described in Part II.E.2.

g. Mixed Use Assets. If a development includes both affordable housing and other types of property, the Oversight Board determines if this mixed use property should remain intact or be split into affordable housing and non-affordable housing components. AB 1484 leaves to the Oversight Board (subject to the DOF review) the decision on whether to make an allocation and, if so, how to accomplish this allocation. The legislation directs the Oversight Board to consider the overall value to the community as well as the benefit to taxing entities of keeping the mixed use development intact or dividing the property in making its decision. The legislation also provides that the disposition of mixed assets may be accomplished by a revenue-sharing arrangement as approved by the Oversight Board on behalf of the taxing entities.

h. Housing Bond Proceeds. Housing bond proceeds from bonds issued prior to January 1, 2011 for affordable housing purposes and secured by a pledge of LMIHF, remaining after satisfaction of enforceable obligations approved on a ROPS (the “Excess Housing Bond Proceeds”), are considered housing assets. The legislation provides that an enforceable obligation may be satisfied by creation of reserves, for projects which are the subject

of that enforceable obligation, consistent with the contractual obligations for the project, or by expending funds to complete that project. See discussion in Part II.A.3 below regarding new process for use of Excess Housing Bond Proceeds.

i. Exclusion of Unencumbered LMIHF Balance. AB 1484 does not change the Dissolution Act treatment of the amounts in the LMIHF balance that were not encumbered by an enforceable obligation as of the effective date of the Dissolution Act. Those funds are to be distributed to the taxing entities pursuant to new audit and review procedures, described in Part II.D.2, and not retained by the Housing Successor for affordable housing uses.

2. Transfer of Housing Assets. AB 1484 sets forth an explicit schedule related to the verification of housing assets transferred to the Housing Successor (Section 341676(a)(2)). By August 1, 2012, the Housing Successor is required to submit a list of all housing assets to the DOF in a format to be prescribed by the DOF. The list must include an explanation of why each asset qualifies as a housing asset, and include a list of assets that transferred between February 1, 2012 (when presumably all housing assets of a Dissolved RDA transferred to the Housing Successor by operation of law pursuant to 34176(a)(1)), and the date the list is made. The DOF has thirty (30) days after receipt of the housing asset list to object to any item on the list. The Housing Successor may request a meet and confer process with the DOF within five (5) business days of receiving any objection from the DOF. There is no timeframe set forth for completing this meet and confer process. Any asset ultimately determined not to be a housing asset is to be returned to the Successor Agency and is subject to clawback by the SCO under Section 34178.8 if not returned. Assets determined to be housing assets under this procedure are not subject to clawback by the SCO under Section 34178.8. The Successor Agency may retain a housing asset, and not transfer it to the Housing Successor, if that asset was previously pledged to pay bonds.

For the transfer of a housing asset that occurs after the date of the list, Sections 34181(c) and (f) provide that an Oversight Board must direct the transfer of housing assets after a 10-day public notice and the DOF then has five business days to review the proposed transfer with the option to extend the review period to up to 60 days. One possible example of this type of future transfer is a property acquired with LMIHF monies, which is in the process of undergoing Polanco Act clean-up and will transfer to the Housing Successor only upon completion of the remediation.

3. Use of Excess Housing Bond Proceeds. After the passage of the Dissolution Act, many practitioners considered any housing bond proceeds not yet committed to a specific project as housing assets to be used by the Housing Successor pursuant to the applicable bond documents with no oversight. AB 1484 significantly changes that practice.

Under Section 34176(g), the Housing Successor can use the Excess Housing Bond Proceeds (defined in subsection 1.h above) only after the following steps and approvals:

a. The Housing Successor must notify the Successor Agency of the intended use or commitment of Excess Housing Bond Proceeds at least twenty (20) days before the deadline to submit the ROPS to the Oversight Board.

b. The Successor Agency must list the proposed expenditure of Excess Housing Bond Proceeds as a separate line item on the ROPS prepared by the Successor Agency.

c. The Oversight Board must approve use of the Excess Housing Bond Proceeds on the ROPS.

d. The usual review period for the ROPS must be completed without objection to the use of the Excess Housing Bond Proceeds by the DOF, the CAC and the SCO.

e. Any review by the Successor Agency, Oversight Board and the DOF is limited to a determination that the use is consistent with the bond covenants and that sufficient funds are available.

f. No commitment or designation of use of the Excess Housing Bond Proceeds is valid until it is included on an approved and valid ROPS.

The Excess Housing Bond Proceeds must be used in a manner consistent with the purposes of the Housing Asset Fund (see subsection 4 below). The Successor Agency shall retain and expend the Excess Housing Bond Proceeds at the discretion of the Housing Successor; provided the Successor Agency ensures that the proceeds are expended in a manner consistent with the bond documents and any requirement relating to tax-exempt status of the bonds. The amount of the expenditures cannot exceed the amount of proceeds available.

4. Low and Moderate Income Housing Asset Fund. The Housing Successor must now create a new type of fund called the Low and Moderate Income Housing Asset Fund (the “Housing Asset Fund”) in its accounting records pursuant to Section 34176(d). If the Housing Successor assumed the housing function of a Dissolved RDA with multiple projects areas, we suggest that the Housing Successor also account for the funds in the Housing Asset Fund on a project area basis for purposes of making applicable findings required under the Community Redevelopment Law. Any funds generated from housing assets (also known as program income by practitioners) and any funds transferred to the Housing Successor pursuant to the transfer provisions discussed in subsection 2 above (such as encumbered LMIHF monies) are required to be placed in the Housing Asset Fund. All payments made to repay amounts previously borrowed from, or owed to, the LMIHF, as of the effective date of the Dissolution Act, shall be placed in the Housing Asset Fund. In addition, twenty percent (20%) of all loan repayments made to the Sponsoring Community on loans described in Part II.E.2 will be deducted from those repayments and transferred to the Housing Asset Fund. All monies in the Housing Asset Fund must be used in accordance with the applicable housing-related provisions of the Community Redevelopment Law. This is a substantial change from the Housing FAQs and will provide a limited but on-going source of funds for low and moderate income housing activities in many communities.

5. Continuation of Community Redevelopment Law Housing Obligations. AB 1484 makes clear that no future deposits are required to be made to the LMIHF despite the assertion to the contrary by some housing advocacy groups. The legislation appears to make this requirement effective as of the effective date of the Dissolution Act therefore causing some ambiguity about whether LMIHF deposits were required for tax increment distributions made to Dissolved RDAs in December 2011 and January 2112.



AB 1484 fails to clearly address whether there are any continuing requirements with regard to redevelopment housing production and replacement housing obligations although the DOF has taken the position that those are no longer applicable except perhaps in the case of enforceable obligations. This may be an area for clean-up legislation in the future.

6. Housing Successors. AB 1484 clarifies many questions regarding affordable housing roles of the Housing Successor in the post- redevelopment era. However, some issues are not resolved. For instance, what happens in situations where the Sponsoring Community elects not to serve as the Housing Successor and the local housing authority also declines to take on that responsibility? Such a situation leaves the housing assets in limbo to the great distress, for instance, of a homeowner trying to refinance a home purchased under a first-time homebuyer program funded from LMIHF monies. Some practitioners had hoped AB 1484 would address this situation more directly. Presumably, the reluctance to act as the Housing Successor in those situations will be alleviated by the revised treatment of housing assets in AB 1484, which allows some flow of funds to the Housing Successor. However, further legislation may be required to address these situations, in particular, funding of administrative costs for Housing Successors where there is no stream of income derived from the Dissolved Agency's housing assets.

B. Successor Agency and Oversight Board Issues.

1. Successor Agency Legal Status. Under the Dissolution Act, the term "successor agency" was defined to refer to the Dissolved RDA's Sponsoring Community (the city, county or city and county that formed the Dissolved RDA), unless that Sponsoring Community adopted a resolution electing not to serve in that capacity. AB 1484 redefines "successor agency" to mean the successor entity to the Dissolved RDA pursuant to Section 34173.

Further, AB 1484 declares that "a successor agency is a separate legal entity from the public agency that provides for its governance," but then fails to directly address the relationship between the Successor Agency and that public agency that does provide for its governance. It appears that what AB 1484 is trying to establish is that: (a) unless the Sponsoring Community elected otherwise, the Sponsoring Community's governing body (e.g., city council or board of supervisors) and staff serve as the governing body and staff of the Successor Agency; but (b) the Successor Agency itself is a separate legal entity from the Sponsoring Community. AB 1484's apparent attempt to accomplish this result is ambiguous and imperfect at best.

As a separate legal entity, the Successor Agency will not merge with the public agency that provides for the Successor Agency's governance (Section 34173(g)). The Successor Agency retains the liabilities of the Dissolved RDA, as those do not transfer to the Dissolved RDA's Sponsoring Community (Section 34173(g)). The Successor Agency can sue and be sued in its own name (Section 34173(g)), and all litigation involving the Dissolved RDA is automatically transferred to the Successor Agency (Section 34173(g)).

The Successor Agency "retains" a separate collective bargaining status and the Dissolved RDA's employees do not automatically become employees of the Sponsoring Community (by

virtue of the Sponsoring Community's election to serve as the Successor Agency) (Section 34173(g)).

The Successor Agency succeeds to the organizational status of the Dissolved RDA but lacks the legal authority to participate in redevelopment activities except to complete work on enforceable obligations (Section 34173(g)).

AB 1484 further affirms that the Successor Agency is deemed to be a local public entity subject to the Ralph M. Brown Act (Section 34173(g)).

AB 1484 provides an opportunity for a Sponsoring Community that initially elected not to serve as a Successor Agency to reverse its decision and agree to serve as the Successor Agency (Section 34173(d)(4)). AB 1484 does not include a provision for a Sponsoring Community that initially elected to serve as a Successor Agency to later reverse the election and determine to no longer serve as the Successor Agency.

Although AB 1484 establishes the separate legal status of the Successor Agency and continues to limit the liability of the Successor Agency to the total sum of property tax revenues it receives pursuant to the Dissolution Act and the value of assets transferred to it (Section 34173(e)), several provisions of AB 1484 expose the Dissolved RDA's Sponsoring Community to penalties and other liabilities for the actions and inactions of the now separate and distinct legal entity that is the Successor Agency (see Part II.D.1. and 2. for additional discussion).

AB 1484 also provides that the Successor Agency is included in the definition of a "local public entity" required to participate in a neutral evaluation process pursuant to Government Code Section 53760.3 prior to filing a petition for federal bankruptcy.

## 2. Successor Agency Roles, Limitations, and Funding.

a. Authorized Activities. In addition to the activities authorized under the Dissolution Act, AB 1484 clarifies the authority of a Successor Agency to conduct certain activities, and also authorizes a Successor Agency to perform activities not previously authorized under the Dissolution Act.

AB 1484 clarifies that a Successor Agency may assume existing cleanup plans and liability limits under the Polanco Redevelopment Act<sup>1</sup> (Section 34173(f)), which was previously understood by most practitioners to be the legislative intent, but not expressly stated in the Dissolution Act.

In addition to previous authority granted under Section 34180(c), under AB 1484 a Successor Agency is authorized to hold reserves when required by bond indenture or when the next property tax allocation from the RPPTF will be insufficient to pay all bond debt obligations due in the following six-month period (Section 34171(d)(1)(A)).

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<sup>1</sup> The existing cleanup plans and liability limits may also be transferred to the Housing Successor at that entity's request.

AB 1484 also more clearly sets forth a Successor Agency's authority to create enforceable obligations to conduct wind-down activities of the Dissolved RDA, such as hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance (Section 34177.3(b)).

Under AB 1484, a Successor Agency can, subject to Oversight Board approval, also enter into contracts, that will constitute enforceable obligations, with the Sponsoring Community to borrow from the Sponsoring Community to assist a Successor Agency to fund shortfalls for Successor Agency administrative costs, enforceable obligations, or project-related expenses (Section 34173(h)).

b. Annual Audit. A Successor Agency must also cause a certified public accountant to conduct a post-audit of a Successor Agency's financial transactions and records at least once annually (Section 34177(n)). AB 1484 is unclear on whether the cost of such post-audits may be shown as a separate enforceable obligation line item on a ROPS.

c. Additional Limitation on Activities. AB 1484 provides that a Successor Agency lacks the authority to enter into new enforceable obligations under the applicable portions of the Dissolution Act or begin new redevelopment work, except to comply with enforceable obligations that existed prior to June 28, 2011 (Section 34177.3(a)).

A Successor Agency has no authority and is prohibited from transferring any powers or revenues of a Successor Agency to any other party (public or private) except pursuant to an enforceable obligation listed on a DOF-approved ROPS (Section 34177.3(c)).

Under the Dissolution Act, a Successor Agency was authorized, with the approval of its Oversight Board, to re-enter into agreements with its Sponsoring Community pursuant to Section 34178(a) and Section 34180(h). AB 1484 narrows this authority, by providing that neither the Successor Agency or its Oversight Board has authority to restore funding for an enforceable obligation between a Successor Agency and the Sponsoring Community if the enforceable obligation was deleted or reduced by the DOF pursuant to Section 34179(h) (unless allowed as a result of the meet and confer process with the DOF, required by court order, or pursuant to new authority created by AB 1484 for certain Successor Agency/Sponsoring Community contracts as fully discussed in Part II.E.2 (Sections 34178(a); 34180(a), and 34180(h)).

d. Successor Agency Administrative Costs. The Dissolution Act established an administrative cost allowance for each Successor Agency, but did not specify which costs of a Successor Agency must be paid from the administrative cost allowance and which Successor Agency costs could be separately placed on a ROPS for payment in addition to and outside of the administrative cost allowance. AB 1484 only partially fills that void.

AB 1484 states that the administrative cost allowance excludes litigation costs related to assets or obligations, settlements and judgments, and predisposition carrying costs for property transferred to a Successor Agency. Furthermore, AB 1484 clarifies that project-specific employee costs (like employee costs for construction inspection, project management, and actual

construction) are excluded from a Successor Agency's administrative cost allowance. By excluding these costs from the administrative cost allowance, AB 1484 grants express authority to a Successor Agency to separately list enforceable obligations for such costs on a ROPS for payment in addition to and outside of the administrative cost allowance.

AB 1484 also provides for various mechanisms to reduce a Successor Agency's administrative cost allowance. As more fully discussed in Section II.B.3, the Oversight Board is authorized to reduce the administrative cost allowance below the \$250,000 annual minimum required under the Dissolution Act (Section 34171(b)). Additionally, upon failure by a Successor Agency to submit a ROPS by October 14 and March 13 of each year, the maximum administrative cost allowance for the fiscal year can be reduced by 25% (Section 34177(m))<sup>2</sup>.

e. Wind-Down of a Successor Agency. When all debts of the Dissolved RDA are retired or paid off, a Successor Agency is required to dispose of all remaining assets and terminate its existence within one year of the final debt payment (Section 34187(b)). AB 1484 is silent on which entity a Successor Agency is allowed to transfer its remaining assets to, how that transfer should be effectuated, or if the Oversight Board has a role in the process of terminating a Successor Agency's existence. Also unclear is what becomes of a Successor Agency's non-monetary obligations or duties.

### 3. Oversight Board Composition and Roles.

a. Composition. AB 1484 makes modifications to the determination of the members of the Oversight Board. Under the Dissolution Act, one member of the Oversight Board is to be selected by the largest special district, by property tax share, with territory in the territorial jurisdiction of the Dissolved RDA. Disputes arose in several jurisdictions related to making that determination and the Dissolution Act did not provide for an arbiter of the dispute. Under AB 1484, the CAC is given the authority to determine which special district is the largest special district, by property tax share, with territory in the territorial jurisdiction of the Dissolved RDA (Section 34179(a)(3(B))).

The Dissolution Act required that one Oversight Board member, representing the employees of the Dissolved RDA, be selected from the recognized employee organization representing the largest number of Dissolved RDA employees employed by a Successor Agency. AB 1484 clarifies that in the case where city or county employees performed the administrative duties of the Dissolved RDA, the appointment to the Oversight Board under 34179(a)(7) is to be made from the recognized employee organization representing the city or county employees that performed the administrative duties of the Dissolved RDA (Section 34179(a)(7)). AB 1484 further clarifies that no conflict of interest exists (under Government Code Section 1090) when the Oversight Board member, employed by a Successor Agency or the Sponsoring Community and appointed pursuant to Section 34179(a)(7), votes to approve a contract as an enforceable obligation (Section 34179(a)(7)).

<sup>2</sup> For the ROPS covering January 1, 2013 through June 30, 2013 this date is September 10.

b. Staffing. Under the Dissolution Act, a Successor Agency is charged with providing staffing to its Oversight Board. Under AB 1484, the Oversight Board can direct a Successor Agency to provide additional legal or financial advice independent from a Successor Agency staff (Section 34179(n)) and the Oversight Board is also authorized to contract with the county or other public or private agency for administrative support (Section 34179(o)).

c. Powers. Under the Dissolution Act, a Successor Agency was guaranteed an administrative cost allowance of not less than \$250,000 for each fiscal year. Under AB 1484, the Oversight Board may reduce a Successor Agency's administrative cost allowance below the \$250,000 statutory minimum (Section 34171(b)).

AB 1484 further provides that Oversight Board decisions on matters within its purview supersede decisions of a Successor Agency or Successor Agency staff (Section 34179(p)).

d. Immunities. Oversight Board members have the same immunities applicable to public entities and public employees (Section 34179(d)) when exercising the authority granted to the Oversight Board under the Dissolution Act and AB 1484.

e. Review of Oversight Board Actions. AB 1484 requires that all actions taken by an Oversight Board be adopted by resolution (Section 34179(e)). A Successor Agency must notify the County Administrative Officer, the CAC, and the DOF, at the same time the Successor Agency transmits a proposed action to the Oversight Board for its approval (Section 34180(j)).

All actions taken by an Oversight Board require transmittal of notice to the DOF by electronic means in a manner of the DOF's choosing. Under the Dissolution Act, the DOF had a period of three business days to request review of Oversight Board actions. AB 1484 extends that time for the DOF to request review of an action to five business days (Section 34179(h)). Actions of the Oversight Board are deemed effective if the DOF does not request a review within five business days of receipt of the notice by the DOF. If the DOF requests a review of a particular Oversight Board action, the DOF has 40 calendar days to approve the action or return it to the Oversight Board for its reconsideration, giving the DOF an additional 30 days to review actions of the Oversight Board beyond the deadline originally in the Dissolution Act. For Oversight Board actions taken pursuant to Sections 34181(a) and (c) related to the disposition of real property and to housing assets, the DOF may extend the review period to 60 calendar days (Section 34181(f)). As discussed in Part II.C.2.c, a slightly different review period applies to the DOF's review of a ROPS.

### C. Enforceable Obligations and ROPS Issues.

1. Enforceable Obligations. AB 1484 contains numerous substantive changes to the definition of the term "enforceable obligation."

In recognition of the timing issues related to the implementation of the Dissolution Act, under AB 1484, a Successor Agency is granted authority to amend the EOPS to authorize

continued payments on enforceable obligations until the ROPS covering the period from January 1, 2012 through June 30, 2012 has been approved by the Oversight Board and the DOF (Section 34177(a)(1)-(2)). AB 1484 also deletes the prohibition on making payments on enforceable obligations after May 1, 2012 unless a ROPS was approved by the Oversight Board and the DOF and certified by the CAC. Instead, under AB 1484, a Successor Agency is allowed to make payments on enforceable obligations listed on the EOPS through the date that the initial ROPS is approved by the Oversight Board and the DOF, erasing any uncertainty for payments made after May 1, 2012 but before the ROPS was approved by the DOF, which for most agencies did not occur until later in May.

AB 1484 clarifies that costs incurred to comply with collective bargaining agreements for layoffs or terminations of employees that performed work for the Dissolved RDA are payable for any employees to whom the obligations apply (Section 34171(d)(1)(C)). If an employee is transferred to the Housing Successor, a Successor Agency is authorized to enter into a contract with the Housing Successor to reimburse the Housing Successor for any costs of the employee obligations, and that contract will constitute an enforceable obligation of the Successor Agency (Section 34171(d)(1)(C)).

AB 1484 clarifies that contracts for the administration or operation of the Successor Agency, including agreements concerning litigation expenses related to assets or obligations, settlements and judgments, and predisposition asset carrying costs, are enforceable obligations of the Successor Agency (Section 34171(d)(1)(F)).

Contrary to published interpretations of the Dissolution Act posted by the DOF, AB 1484 establishes that amounts borrowed from and payments owing to the LMIHF (including SERAF loans) are enforceable obligations and are payable to the Housing Successor (Section 34171(d)(1)(G)) (see further discussion in Part II.A.1.f).

As discussed in other sections of this Summary, AB 1484 also allows a Successor Agency, subject to Oversight Board approval, to enter into an enforceable obligation whereby a Successor Agency borrows money from the Dissolved RDA's Sponsoring Community for administrative costs, enforceable obligations, or project-related expenses at the Sponsoring Community's discretion (Section 34173(h));<sup>3</sup>

AB 1484 also purports to retroactively declare as non-enforceable any contract entered into by a redevelopment agency after June 27, 2011 (Section 34177.3(d)). (See more detailed discussion in Part II.F.5.)

## 2. Recognized Obligation Payment Schedules.

AB 1484 makes several changes to the process and timing for preparation and approval of each ROPS.

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<sup>3</sup> Technically, Section 34173(h) only gives authority to a city, not a county, to make such a loan, although there does not appear to be any policy reason why the Legislature would intend such a distinction.

a. Changes to the Initial ROPS (For the Period Ending June 30, 2012). AB 1484 deletes the requirement that the initial ROPS be certified by the CAC before it can take effect (Section 34177(l)(2)(A)). AB 1484 also reforms dates and payment requirements in the initial ROPS to reflect delays in implementing the Dissolution Act caused by litigation (i.e. a new requirement that the initial ROPS specify January payments and estimate payments through June 30, 2012). AB 1484 states that the Initial ROPS takes effect once it has been approved by the Oversight Board and the DOF.

b. Schedule for Adoption of ROPS. AB 1484 establishes a schedule for adoption of the ROPS for the period ending June 30, 2013 (the “Third ROPS”) and all subsequent ROPS.

Although the schedule previously distributed by the DOF indicated that a Successor Agency and its Oversight Board would have until October 1, 2012 to approve the Third ROPS, under AB 1484 a Successor Agency is required to submit to the DOF and the CAC the Third ROPS, approved by the Oversight Board, no later than September 1, 2012.

The DOF will require that the ROPS be completed on a DOF-approved form. Moreover, AB 1484 now requires the Successor Agency staff to submit an electronic copy of the ROPS to the county administrative officer, the CAC, and the DOF at the same time as the proposed ROPS is submitted to the Oversight Board for approval (Section 34177(l)(2)(B)).

Beginning with the fourth ROPS (for the period ending December 31, 2013), a Successor Agency will be required to submit an Oversight Board approved ROPS to the CAC and the DOF no fewer than 90 days prior to the semiannual RPTTF property fund distribution (or October 4 for the January 2 distribution and March 3 for the June 1 distribution) (Section 34177(m)). If a Successor Agency fails to timely submit an Oversight Board approved ROPS within the specified deadlines, AB 1484 gives standing to creditors of a Successor Agency, the DOF and affected taxing entities to file suit for writ of mandate to compel a Successor Agency to adopt a ROPS (Section 34177(m)), and exposes the Successor Agency to additional penalties described below.

c. Review of ROPS. AB 1484 greatly expands this review period and authority of the DOF and significantly changes the ROPS review and approval process. Under the Dissolution Act, the DOF had a period of three business days to request a review of an enforceable obligation listed on a ROPS. AB 1484 extends the deadline to request review to five business days. It is presumed, pursuant to Section 34179(h) that if the DOF does not request a review of any items listed on a ROPS within the five business day review period, the ROPS will be deemed effective. The CAC’s role in review of the ROPS is discussed in more detail in Part II.D.3.

Under AB 1484, the DOF is required to make its determination “of the enforceable obligations and the amounts and funding sources of the enforceable obligations” no later than 45 days after the ROPS has been submitted by a Successor Agency. The addition of Section 34177(m) appears to give the DOF authority not only to determine what constitutes an enforceable obligation, but also provides the additional authority to determine the amount and

funding source to meet enforceable obligations. Furthermore, amendments to Section 34179(h), give the DOF the authority to eliminate or modify any item on the ROPS being reviewed under Section 34179 prior to DOF approval (Section 34179(h)). In some respects, these changes appear to provide statutory authority for practices the DOF had already assumed for itself in the first and second ROPS reviews.

A Successor Agency may request additional review by the DOF and an opportunity to meet and confer on disputed items, but such a request must be made within five business days of the Successor Agency's receipt of a DOF determination (Section 34177(m)). The DOF is then required to notify a Successor Agency and the CAC of its review at least 15 days before the date of the property tax distribution (by December 18 for the January 2 distribution and May 17 for the June 1 distribution).

A Successor Agency and Oversight Board may approve amendments to a ROPS to reflect the resolution of a dispute between the DOF and a Successor Agency, but such amendments will not effect a past allocation of property taxes or create a liability to any affected taxing entity with respect to past allocations (Section 34179(h)).

d. Penalties. Failure to approve and submit a timely ROPS may result in the assessment of various penalties to a Successor Agency and/or to the Sponsoring Community.

If a Successor Agency does not timely submit a ROPS pursuant to the deadlines set forth in AB 1484, the Sponsoring Community may be subject to a \$10,000 per day civil penalty for each day the ROPS is delinquent. In addition, failure of a Successor Agency to submit a ROPS within 10 days of the deadline (by October 14 for the January 2 distribution and March 13 for the June 1 distribution)<sup>4</sup> may result in a 25% reduction of a Successor Agency's maximum administrative cost allowance for the period covered by the delinquent ROPS (Section 34177(m)(2)).

If a Successor Agency fails to submit an Oversight Board approved ROPS pursuant to the requirements of AB 1484 within five business days after the April 1 and October 1 dates on which the CAC releases the estimated property tax allocations from the RPTTF, the DOF may determine if any amount should be withheld to pay enforceable obligations (Section 34177(m)(3)). Funds withheld pursuant Section 34177(m)(3) are to be distributed to affected taxing entities in accordance with Section 34183(a)(4). If the DOF orders the CAC to withhold funds to pay for a Successor Agency's enforceable obligations, those funds will only be disbursed to the Successor Agency pursuant to a ROPS approved by the DOF (Section 34177(m)(3)).

#### D. Flow of Funds and Financial Issues.

1. Near Term Payments to Taxing Entities. AB 1484 contains provisions that appear to be designed to assure payments are made to the taxing entities in the short term, including payment of the FY 2011-12 pass-through payments and the potential payment of residual

<sup>4</sup> For the Third ROPS, the date is September 10, 2012.



amounts pursuant to Section 34183(a)(4) for the first ROPS period although there was no distribution from the RPTTF for that period.

a. Fiscal Year 2011-12 Pass-through Payments. AB 1484 adds Section 34184.5 to the Dissolution Act to provide for the payment of the FY 2011-12 pass-through amounts to the taxing entities if such payments were not previously made.

Section 34184.5(a)(1) requires the CAC to make payments to the taxing entities for the FY 2011-12 pass-through amounts that were not previously paid, either by the former Dissolved RDA or by the CAC from the June 1, 2012 distribution from the RPTTF, by reducing the amounts that would be paid to a Successor Agency for enforceable obligations in subsequent distributions from the RPTTF, subject to any subordination of the payments owed to bond debt (as currently allowed pursuant to Section 34183(b)). The CAC will continue to reduce the amounts paid to a Successor Agency from the RPTTF during subsequent distributions until the full amount owed to the taxing entities for the FY 2011-12 pass-through payments have been made. Alternatively, a Successor Agency can use reserve funds to make these payments.

Pursuant to this section, if a Successor Agency did not have sufficient funds to pay the full amount of its pass-through payments for FY 2011-12, the unpaid amount effectively becomes a debt of a Successor Agency with a higher priority for payment from the RPTTF than other enforceable obligations in the next distribution from the RPTTF. The only exception will be if the Dissolved RDA, prior to dissolution, subordinated the pass-through payments to bond debt in which event the bond debt will have priority over the pass-through payments as currently allowed by Section 34183(b).

Under Section 34184.5(a)(2), if the Dissolved RDA did not make the FY 2011-12 pass-through payments but the CAC did, the CAC can offset up to one-half of the amount the CAC paid from the next distribution from the RPTTF to the Successor Agency. If the amount distributed to the Successor Agency is not sufficient to make the full deduction of one-half of the amount owed in the next distribution, the CAC is to continue to reduce the amounts allocated to the Successor Agency in subsequent distributions until one-half of the amount paid by the CAC is deducted. The CAC can also accept payments from the Successor Agency's reserve funds to cover the deduction provided for above.

b. Residual Distributions for FY 2011-12. Section 34183.5 also contains procedures for distributing any residual amounts of funds in the RPTTF that would have been available if the Dissolution Act had gone into effect when originally intended. If Dissolved RDAs had been dissolved effective October 1, 2011 under the Dissolution Act as originally set out in the statute (rather than on February 1, 2012 as modified by the Supreme Court), the first distribution from the RPTTF would have been in January 2012 and would have covered the initial ROPS period of January 1, 2012 through June 30, 2012. However, because of the Supreme Court stay, the funds that would have been available for deposit into the RPTTF for the January 2012 distribution were distributed to the Dissolved RDAs late in 2011 and used by most agencies to pay enforceable obligations on the EOPS incurred since July 1, 2011. The purpose

of Section 34183.5(b) appears to be to retroactively undo the Supreme Court stay and attempt expeditiously to collect funds from Successor Agencies<sup>5</sup>.

The provisions of Section 34183.5 require the distribution of residual funds deemed to be owing to the taxing entities from the first ROPS period of January through June 2012. The amounts owed to the taxing entities pursuant to 34183(a)(4) are to be determined based on the initial ROPS approved by the Department of Finance. How the amount is to be determined since there was no distribution from the RPTTF for this period is not explained in the legislation.

If the taxing entities have not received the full amount owed under Section 34183(a)(4) by July 9, 2012, the CAC is to determine the amount, if any, owed by each Successor Agency and demand the funds from the Successor Agency by no later than July 12, 2012. Although this section does not appear to allow for any appeal of the CAC's demand, the DOF assured legislators prior to passage of AB 1484 that the meet and confer provisions elsewhere in the legislation are applicable to this section as well.

If the CAC fails to make the demand by July 9, 2012, the DOF or any affected taxing agency can request a writ of mandate to compel the CAC to make the required determination of the amounts owed. The CAC is subject to penalties of 10% of the amount owed plus 1.5 % of the amount owed to each taxing entity for each month that it fails to perform its duties under this section. Additionally, any county that fails to make the determinations required by July 9, 2012 or fails to distribute the full amount received from the Successor Agencies by July 16, 2012 will not receive the distribution of sales and use tax scheduled for July 18, 2012 or any subsequent sales and use tax distributions up to the full amount owed to the taxing entities.

If the Successor Agency fails to make the payment demanded by the CAC by July 12, 2012, the DOF or any taxing entity can bring a writ of mandate to require the payment. Failure to make the payment will subject the Successor Agency and the Sponsoring Community to penalties of 10% of the amount owed plus 1.5% for each month that the payments are not made. The Successor Agency also cannot make any payment other than bond debt until the amounts owed are paid.

Finally, if the amounts owed are not paid on July 12, 2012, the Sponsoring Community will not receive a distribution of sales and use tax on July 18, 2012 or any subsequent distributions up to the full amount owed to the taxing entities.<sup>6</sup>

2. Unencumbered Fund Remittances; Finding of Completion. Section 34179.5 provides new procedures for reviewing the available cash assets of the Dissolved RDA (the "Review"). This Review is to be conducted by each Successor Agency with the end goal of distributing what are determined to be available cash assets to the taxing entities during FY

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<sup>5</sup> It should be noted that the DOF Exhibit H, *Distribution, Reporting and Transaction Period for the RPTTF*, shows that no residual distribution pursuant to Section 34183(a)(4) is due for the initial ROPS period. This appears to be the logical consequence of the fact that there were no deposits into the RPTTF for this reporting period so distributions of residual amounts appear to be impossible.

<sup>6</sup> The constitutionality of these offsets is questionable.

2012-13. At the conclusion of the Review, if the Successor Agency remits the cash assets to the CAC, and if the Successor Agency has also made the payments summarized in Part II.D.1, the DOF will issue a finding of completion for the Successor Agency (a “Finding of Completion”). As fully discussed in Part II.E, the issuance of the Finding of Completion makes the Successor Agency eligible to retain Dissolved RDA properties, reinstate loans between the Dissolved RDA and the Sponsoring Community, and spend unspent bond proceeds from bonds issued prior to January 1, 2011 for the purposes for which the bonds were issued (subject to restrictions).

Successor Agencies undertaking the Review will need to proceed carefully in instructing the accountant hired. The Review is governed by definitions contained in Section 34179.5 that are multi-layered and nuanced.

a. Timeline for Review. The Review as it relates to the LMIHF must be complete by October 1, 2012. The Review for all other funds must be complete by December 15, 2012.

b. Review Procedures. Section 34179.5 requires each Successor Agency to hire a licensed accountant with experience and expertise in local government accounting to review the unobligated balances available for transfer to the taxing entities. The legislation does not provide any funding source for paying for the accountant and does not indicate whether the costs of the Review are to be covered by the Successor Agency's administrative cost allowance. The selection of the accountant has to be approved by the CAC. Alternatively, an audit conducted by the CAC that provides the required information can be used to comply if the Oversight Board concurs. The nature of the Review differs significantly from the agreed-upon procedure audits currently under way (see further discussion in Part II.D.3), so it is unlikely that the agreed-upon procedure audits will provide the required information. The DOF can specify the form in which the Review is to be provided.

c. Contents of Review. The statute contains specific definitions to be used for purposes of complying with the Review requirement. Proper interpretation of these definitions is essential to ensuring that the Review is conducted correctly. A Successor Agency will want to work closely with the accountant hired to perform the Review on setting the parameters for the Review to ensure correct application.

(1) Enforceable Obligations. For purposes of the Review, “enforceable obligations” are considered primarily to be those contained in the definition of enforceable obligations that applies after dissolution as set forth in Section 34171(d) and thus would exclude most contracts or agreements between the Dissolved RDA and the Sponsoring Community even though under the Dissolution Act those contracts are considered enforceable obligations prior to dissolution (through January 31, 2012). Since the Review covers both pre-dissolution and post-dissolution periods, this definition appears to be a camouflaged attempt to retroactively disallow payments prior to dissolution made by a Dissolved RDA to its Sponsoring Community, even though such payments were valid at the time made.

(2) Cash and Cash Equivalents. For purposes of the Review, “cash and cash equivalents” are defined as cash in hand, bank deposits, LAIF deposits, deposits with

the Sponsoring Community treasury and any other pool, marketable securities, commercial paper, US Treasury bills, banker's acceptances, payables and amounts from other parties and any other money owed by the Successor Agency (presumably this section was intended to mean amounts owed to the Successor Agency).

(3) Transferred. The definition of "Transferred" presents numerous interpretation challenges. As the definition reads: "Transferred means the transmission of money to another party that is not in payment of goods or services or an investment or where the payment is de minimus. Transfer also means where the payments are ultimately merely a restriction on the use of the money" (Section 34179.5(b)(3)). The Review is required to include the dollar value of assets transferred from the Dissolved RDA or the Successor Agency to the Sponsoring Community or any other party. Based on the definition of the term Transferred and Transfer in the statute, it appears that the Review need only cover those instances where assets were transferred without consideration, for investment purposes or pursuant to agreements that merely restricted the use of the money.

The Review is required to include all of the following:

- The dollar value of assets transferred from the Dissolved RDA to the Successor Agency upon dissolution;
- The dollar value of assets and cash and cash equivalents transferred by the Dissolved RDA or Successor Agency to the Sponsoring Community between January 1, 2011 and June 30, 2012, including the purpose of any such transfer and the documentation for any enforceable obligation related to such transfer;
- The dollar value of any cash or cash equivalents transferred after January 1, 2011 through June 30, 2012 to any other public agency or private party and the purpose of those transfers including documentation of any enforceable obligations requiring the transfer;
- Expenditure and revenue accounting information and transfers and funding sources for the 2010-11 and 2011-12 fiscal years that reconciles the balances, assets, liabilities of the Successor Agency on June 30, 2012 to those reported to the SCO for FY 2009-10;
- Separate accountings for (i) the balance of the LMIHF, and (ii) for all other funds combined that includes the following:
  - A statement of value of each fund as of June 30, 2012;
  - An itemized statement listing any amounts that are legally restricted and cannot be provided to the taxing entities, including bond proceeds, grant funds or restricted funds provided by other governmental entities;

- An itemized statement of the value of any assets that are not cash or cash equivalents which can include land, records and equipment. Physical assets can be valued at purchase cost or estimated market value. Housing assets are to be listed separately;
- An itemized list of any current balances that are legally owed to fund an enforceable obligation with the specific enforceable obligation identified. The Successor Agency is also to provide a listing of all approved enforceable obligations that includes a projection of the annual payments needed to satisfy the obligation and the projected revenues available to pay the obligation;
- If the Review finds that the current balances are necessary to fund the enforceable obligations because available restricted funds and future revenues are insufficient, the Review must identify the amounts necessary to pay the enforceable obligations from the current balances;
- Additionally, if the Review determines that the Successor Agency will have insufficient property tax to pay the enforceable obligations, the Review is to include the projected property tax revenue and other revenues projected to be available to the Successor Agency along with the amount and timing of bond debt payments of the Successor Agency; and
- An itemized list of the current balances that will be needed to pay enforceable obligations to be placed on a ROPS for the current fiscal year.

The Review is required to total the net balances available after deducting the restricted funds, the physical assets and the balances necessary for payment of enforceable obligations where there are insufficient funds from the projected property tax revenues and other revenues to pay the enforceable obligations. The balance available is to include the value of any cash transferred between January 1, 2011 and June 30, 2012 if there is not an enforceable obligation for that transfer. It is a rebuttable presumption that cash and cash equivalents are available to disburse to the taxing entities.

If the Review determines that there are insufficient cash balances to pay the amount determined to be the available amount, that insufficiency is to be demonstrated in a separate schedule.

d. Oversight Board and DOF Role with Respect to Review. Upon completion of the Review, the Review is to be submitted to the Oversight Board for review and approval. Additionally, the Successor Agency is to submit a copy of the ROPS to the County administrative officer, the CAC and the DOF at the same time the Successor Agency submits the Review to the Oversight Board.

Upon receipt of the Review, the Oversight Board is to convene a public comment session to take place at least five business days before the Oversight Board votes on approval of the Review. The Oversight Board is to review, approve and transmit the Review by October 15, 2012 for the LMIHF and by January 15, 2013 for all other funds. The Oversight Board can

adjust amounts provided in the Review to reflect additional information and analysis. The Oversight Board can also authorize the Successor Agency to retain the restricted funds, the non-cash assets, and the cash balances that are contractually committed or needed for items to be placed on the ROPS during the fiscal year.

The DOF may adjust the amounts determined to be available for allocation to the taxing entities in the Review based on its analysis and information provided by the Successor Agency and others. The DOF is to complete its review by November 9, 2012 for the LMIHF and by April 1, 2013 for the remaining funds. The DOF is required to provide the Successor Agency and the Oversight Board with an explanation of the basis for overturning or modifying any findings or determinations of the Oversight Board.

The Successor Agency and the Dissolved RDA's Sponsoring Community can request a meet and confer with the DOF after the DOF has made its determination of the amounts available for allocation to the taxing entities within five business days of receipt of the DOF's determination (and no later than November 16, 2012 for the LMIHF portion of the Review). The request to meet and confer must include an explanation and documentation of the basis for the dispute. The DOF is required to meet and confer with the requesting party and make a decision within 30 days of the request to meet and confer.

e. Payments to Taxing Entities and Penalties for Noncompliance. Successor Agencies are required to transmit the funds determined to be available for allocation to the taxing entities within five business days of receipt of the notification of the amount determined by the DOF. Successor Agencies are required to make diligent efforts to recover money determined to be transferred without an enforceable obligation. If the Successor Agency fails to transmit the funds determined to be available for allocation to the taxing entities, there are a variety of remedies set forth in the statute including:

- If the Successor Agency cannot recover funds transferred to another public agency without an enforceable obligation, the DOF can order the Board of Equalization to offset the sales and use tax of the local agency that received the transferred funds, or the if the DOF does not order a sales or use tax offset, the CAC can offset property tax of the local agency that received the funds<sup>7</sup>;
- The DOF and the CAC can demand the return of funds improperly spent or transferred to a private party and can recover those funds plus a 10% penalty and interest through any lawful means;
- If the Sponsoring Community is performing the duties of the Successor Agency<sup>8</sup>, the DOF can order an offset of the Sponsoring Community's sales and use tax. If the DOF does not order such an offset, the CAC can offset property tax owed to the Sponsoring Community;

<sup>7</sup> As noted earlier, the constitutionality of these offsets is questionable.

<sup>8</sup> The statute does not address the fact that, pursuant to AB 1484, each Successor Agency is now a separate and distinct legal entity and is no longer the Sponsoring Community.

- As an alternative to all of the above, the DOF can order the CAC to offset the amounts owed against future distributions from the RPTTF to the Successor Agency pursuant to Section 34183.

If the DOF determines that the full payment of the amounts determined to be available for allocation to the taxing entities is not feasible or would jeopardize a Successor Agency's ability to pay enforceable obligations, the DOF can agree to an installment payment plan.

3. County Auditor-Controller Responsibilities; Redevelopment Property Tax Trust Fund Distribution Issues. AB 1484 contains numerous substantive changes to the role and responsibilities of the CAC in the redevelopment unwind process and to the instructions for administering and making distributions from the RPTTF. In addition to matters described in other parts of this Summary, key changes include:

a. The initial ROPS (covering January through June 2012) is no longer subject to certification by the CAC based on the results of the agreed-upon procedures audit that the CAC is required to conduct or cause to be conducted by an external auditor (the "AUP Audit") (Section 34177(1)(2)). This change raises questions about the continuing purpose of the AUP Audit.

b. The AUP Audit completion deadline is pushed back from July 1 to October 1, 2012, and related delivery dates are pushed back correspondingly (Section 34182(a)).

c. Instead of "certifying" a ROPS, the CAC is instead authorized under AB 1484 to review a ROPS and object to inclusion of any items that are not demonstrated to be enforceable obligations and/or the funding source proposed for any items. Such review and objection may occur before or after Oversight Board action on a particular ROPS. The CAC is directed to submit notice to the DOF, the Successor Agency, and the Oversight Board concerning any objection, generally at least 60 days prior to the distribution date for moneys from the RPTTF for the applicable ROPS period. If an Oversight Board disputes a CAC objection to a ROPS item, it may refer the matter to the DOF for determination of what will be approved for inclusion on the applicable ROPS (Section 34182.5). The AUP Audit presumably could be of use to a CAC in this role.

d. In calculating pass-through payment amounts that would have been owed had the Dissolved RDA not been dissolved, the CAC is directed to assume that the requirement still existed to deposit a portion of what would have been tax increment into the LMIHF (Section 34183(a)(1)).

e. The obligation of the CAC to make a distribution from the RPTTF on May 16, 2012 (as required by the Dissolution Act as modified by the Supreme Court) is deleted by AB 1484, thereby sanctioning the previously unauthorized practice implemented by most CACs (Section 34183(a)(2)).

f. The CAC is required to provide estimates of the amounts it will distribute from the RPTTF for the upcoming six-month period on October 1 (was November 1 in the Dissolution Act) and April 1 (was May 1 in the Dissolution Act) (Section 34182(c)(4)).

g. The date for distributions by a CAC from the RPTTF for the first six-month period of each calendar year (starting in 2013) is moved from January 16 to January 2. The distribution date for the second six-month period of each calendar year remains June 1 (Sections 34183(a) and 34185).

h. If there is a confirmed insufficiency of funds available to pay all of a Successor Agency's debt service enforceable obligations, the Dissolution Act established a procedure for reducing various distributions from the RPTTF to deal with such insufficiency, including giving priority of RPTTF distributions to such debt service payments over any statutory pass-through payments that had been subordinated under the applicable statutory procedure to the debt service payments. AB 1484 clarifies that contract pass-through payment obligations entered into prior to 1994 that were expressly subordinated to debt service payments on a particular enforceable obligation are also subordinated for purposes of distributions by the CAC from the RPTTF (Section 34183(b)).

i. Within 10 days after each semi-annual distribution from the RPTTF, the CAC must provide a report to the DOF on specified matters related to such distribution (Section 34183(e)).

j. AB 1484 establishes a procedure for a CAC to adjust the amounts distributed from the RPTTF to a particular taxing entity for a succeeding six-month period to the extent the amount of pass-through payment distributed by the CAC to that taxing entity for the preceding six-month period (based on estimates of the amount owed) varied from the actual amount of pass-through payment owed to that taxing entity (based on more complete subsequent information) (Section 34186(b)).

k. Once a Successor Agency pays off all the enforceable obligations of the Dissolved RDA, AB 1484 directs it to dispose of all remaining assets and terminate its existence within one year of the final debt payment. When the Successor Agency is terminated, all pass-through payment obligations cease and no further property tax is deposited in or distributed from the RPTTF, with the effect that all property tax that would formerly have been tax increment becomes normal property taxes distributed among the taxing entities as if the Dissolved RDA had never existed (Section 34187(b)).

l. Acknowledging that it had created inconsistency and uncertainty in the way it enacted related provisions of the Dissolution Act regarding calculation of the amount of pass-through payments owed, the Legislature in AB 1484 states its intent that the full amount of pass-through payments be made from the RPTTF, and that the apparent reduction in such payments mandated by one of the provisions at issue in the Dissolution Act would not be operative (uncodified Section 36 of AB 1484). Serious questions remain as to whether the payment of full pass-through amounts, as now clarified by AB 1484, violates various provisions of the California Constitution.



4. Reversal of Certain Successor Agency/Sponsoring Community Transactions. AB 1484 directs the SCO to review activities of each Successor Agency to determine if it transferred an asset on or after February 1, 2012 (when the Successor Agency was established) to the Sponsoring Community (city, county, or city and county that formed the Dissolved RDA) other than pursuant to an enforceable obligation contained on an approved and valid ROPS.<sup>9</sup> If such a transfer did occur other than in connection with an enforceable obligation, then the SCO is directed to order the return of the transferred asset to the Successor Agency (unless such return is prohibited by state and federal law), and the "affected local agency" (words used in the statute) is directed to effectuate such return of the applicable asset as soon as practicable. This provision does not apply to the transfer of housing assets (see discussion of housing asset definition in Part II.A) which, if held by the Successor Agency, are allowed and required to be transferred to a Housing Successor (which often will be the Sponsoring Community) for continued housing functions (Section 34178.8).

5. Refunding Bonds. AB 1484 provides much greater flexibility in the refunding of bonds than the Dissolution Act provided. The legislation recognizes the advisability of authorizing the refunding bonds to lower the long-term cost of financing in many situations. Section 34177.5 adopts in most respects the language prepared by a committee of bond counsel from around the State, although it did not include the suggested language to address greater flexibility in refunding variable rate bonds. We suggest consultation with bond counsel for details regarding possible restructuring of any bonds.

As with other actions in the post-redevelopment era, any bond refunding requires Oversight Board approval and DOF review. The statute also provides for subordination of pass-through payments by taxing entities in substantially the same manner as previously provided in the Community Redevelopment Law (Section 34177.5(c)). To provide greater certainty to bond holders and others, the Successor Agency may petition the DOF to provide written confirmation that a DOF approval of an enforceable obligation with payments over time is final and conclusive and reflects the DOF's approval of subsequent payments under that enforceable obligation. If such confirmation is granted by the DOF, DOF review in the future is limited to confirming the payments are required by that prior approved enforceable obligation (Section 34177.5(i)).

A validation action may be brought regarding any bond refunding within 30 days of the Oversight Board approval of the refunding (Section 34177.5(e)). The DOF is required to be notified of a validation action involving a bond refunding (Section 34177.5(d)).

#### E. Potential Local Benefits of AB 1484.

The following potential benefits to a Successor Agency and its Sponsoring Community are offered under AB 1484 once the Successor Agency has attained a Finding of Completion from the DOF, as further described in Part II.D.2.

<sup>9</sup> Presumably, the same treatment should apply to a transfer pursuant to an enforceable obligation listed on an approved Enforceable Obligation Payment Schedule in effect prior to the effectiveness of the first ROPS.

1. Property Disposition. The Dissolution Act calls for the Successor Agency, under the direction of the Oversight Board, to dispose of real property it received from the Dissolved RDA either for limited public uses, or for disposition into the private market expeditiously and with a view toward maximizing value, with the disposition proceeds ultimately made available for distribution to the affected taxing entities.

AB 1484 appears to suspend this process,<sup>10</sup> and to provide certain flexibility and local benefits in connection with property disposition for a Successor Agency that has received a DOF Finding of Completion (Section 34191.3). Within six months after receipt of a Finding of Completion, the Successor Agency must submit a long-range property management plan for the real property of the Dissolved RDA for approval by the Oversight Board and the DOF (Section 34191.5(b)). The property management plan must include an inventory (with specified information) about each property, and address the use or disposition of each property (Section 34191.5(c)).

Permitted uses under a property management plan include:

- a. retention of the property for governmental use;
- b. retention of the property for future development;
- c. sale of the property; and
- d. use of the property to fulfill an enforceable obligation.

Upon approval of the property management plan, the properties of the Dissolved RDA are to be placed in a Community Redevelopment Property Trust Fund administered by the Successor Agency in accordance with the approved property management plan (Sections 34191.4(a) and 34191.5(a)). If the property management plan calls for use or liquidation (sale to obtain revenues) of a property for a project identified in an approved redevelopment plan, that property is to be transferred to the Sponsoring Community for that purpose. If the property management plan calls for the liquidation of the property or use of revenues from the property for purposes other than a project identified in a redevelopment plan or other than to fulfill an enforceable obligation, the proceeds from the sale are to be distributed as property taxes to the taxing entities (Section 34191.5(c)(2)(A) and (B)).

In short, use of property placed in the Community Redevelopment Property Trust Fund in accordance with an approved property management plan enables the Successor Agency and the Sponsoring Community to direct the use of specified properties and revenues generated from those properties for community development activities, including affordable housing, in a manner somewhat similar to the uses of property formerly implemented by the Dissolved RDA.

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<sup>10</sup> It is not clear if a Successor Agency can continue to follow the Dissolution Act path and dispose of property under Oversight Board direction to maximize value received for distribution to the affected taxing entities, or is instead compelled to follow the alternative path set out in AB 1484.

2. Sponsoring Community Loans. Under the Dissolution Act, the repayment of many loans made in good faith by a Sponsoring Community to its now Dissolved RDA became unenforceable as of February 1, 2012 and not subject to repayment by the Successor Agency. Under AB 1484, upon application by the Successor Agency and approval by the Oversight Board (which approval in turn creates the opportunity for DOF review and disapproval as further described in Part II.B.3.e), loan agreements between the Sponsoring Community and the Dissolved RDA that were previously deemed not to constitute enforceable obligations as of February 1, 2012, can once again be deemed to be enforceable obligations if the Oversight Board finds that the loan from the Sponsoring Community to the Dissolved RDA was for legitimate redevelopment purposes (Section 34191.4(b)).

However, AB 1484 places several conditions on the repayment by the Successor Agency to the Sponsoring Community of a loan that is reinstated, including:

- a. accumulated interest on the loan is recalculated from loan origination at the Local Agency Investment Fund ("LAIF") interest rate and supersedes any different interest calculation in the loan agreement;
- b. going forward, interest is also limited to the LAIF rate;
- c. loan repayments to the Sponsoring Community cannot begin until FY 2013-14 and are to be made according to a defined schedule over a "reasonable term of years", with the maximum annual repayment being strictly limited by statutory formula;
- d. repayments received by the Sponsoring Community must first be applied to retire any outstanding amounts that had been previously borrowed by the Dissolved RDA from its LMIHF (e.g., amounts borrowed to make SERAF payments); and
- e. 20% of any remaining repayments received by the Sponsoring Community are deducted and placed in the Housing Asset Fund maintained by the Housing Successor (see discussion of this fund in Part II.A.4) (Section 34191.4(b)).

Depending on circumstances, these conditions could significantly reduce the repayment amounts received by the Sponsoring Community under any loan that is reinstated under AB 1484 following Oversight Board approval (and lack of DOF disapproval) of such reinstated loan.

3. Bond Proceeds. The Dissolution Act was ambiguous about the authority for a Successor Agency to expend unencumbered bond proceeds. Under AB 1484, following receipt of a DOF Finding of Completion, a Successor Agency is clearly authorized to spend, in a manner consistent with the original bond covenants, excess bond proceeds (proceeds not already committed to satisfy approved enforceable obligations) from bonds issued prior to 2011. Such expenditures of excess pre-2011 bond proceeds are considered enforceable obligations to be separately listed on the ROPS submitted by the Successor Agency. If such excess bond proceeds cannot be spent in a manner consistent with the bond covenants, then those proceeds are to be used to defease or purchase bonds (Section 34191.4(c)). AB 1484 does not clarify the authority

to expend bond proceeds from bonds issued by a Dissolved RDA in 2011. AB 1484 contains additional provisions regarding expenditures of unencumbered bond proceeds of a bond issuance secured by deposits in the LMIHF (see discussion in Part II.A.3).

F. Other Provisions.

AB 1484 adds other provision, including the following:

1. Economic Development Corporations. AB 1484 adds Section 34167.10 to expand the definition of “city, county and city and county” to include independent entities that are reporting units, component units or controlled by the city, county or city and county. The expanded definition is declarative of existing law and thus applies retroactively to the adoption of the Dissolution Act.

For purposes of determining whether an independent entity is controlled by the Sponsoring Community, the statute list factors to be considered but does not indicate whether all factors must be met or how to weigh the factors. The fact that the independent entity is a separate legal entity is not relevant to the analysis. The factors to be considered include, whether:

- a. the Sponsoring Community exercises substantial municipal control over the independent entity's operations, revenues or expenditures;
- b. the Sponsoring Community has ownership or control over the independent entity's property;
- c. the Sponsoring Community and the independent entity share common or overlapping governing boards or conterminous boundaries;
- d. the Sponsoring Community was involved in the creation of the independent entity;
- e. the independent entity performs functions customarily performed by municipalities and financed through levies of property taxes; and
- f. the Sponsoring Community provides administrative support for the independent entity.

The expanded definition of city, county and city and county is an effort to subject asset transfers to economic development corporations and other types of corporations separate and distinct from the Sponsoring Community to the clawback provisions in the Dissolution Act (Section 34167.5), and make agreements between the Dissolved RDA and such corporations null and void, similar to Sponsoring Community/Dissolved RDA agreements (Section 34178(a)).

2. RDA Land Use Functions. AB 1484 authorizes the transfer of land use plans and land use functions of the Dissolved RDA to the Sponsoring Community at the request of the Sponsoring Community (Section 34173(i)).

3. Statute of Limitations. The Dissolution Act lengthened to two years the statute of limitations on bringing a challenge to a redevelopment plan adoption or amendment, a redevelopment bond issuance, and findings and determinations of a redevelopment agency or legislative body. AB 1484, in turn, completely tolls (suspends) the already lengthened statute of limitations on these matters until the DOF has issued a Finding of Completion (see further discussion in Part II.D.2) to the Successor Agency of the applicable Dissolved RDA. Once the DOF has issued a Finding of Completion, the statute of limitations reverts to the original pre-Dissolution Act 90-day period (which will have long expired at that point) (Sections 33500 and 33501).

Section 34177.5 provides that a Successor Agency may request that the DOF waive the two-year statute of limitations with regard to redevelopment plan adoptions and amendments and findings and determinations made by the Dissolved Agency or its legislative body for plan adoptions, plan amendment, findings and determinations made after January 1, 2011. The DOF may provide this waiver if it determines, in its discretion, that it is necessary for the Successor Agency to fulfill an enforceable obligation.

4. Validation Action Notices and Venue. The DOF and the SCO (and, for certain actions, the affected taxing entities) must be properly notified of any validation action with respect to any action of a Dissolved RDA or Successor Agency or with respect to any enforceable obligation or matter of title to an asset the belonged to a Dissolved RDA. Such notification is a condition to the proper filing of the action. All such actions must be filed in the County of Sacramento (Sections 34189.1 and 34189.2).

5. Post-Suspension Actions. AB 1484 declares that any action taken by a Dissolved RDA after June 27, 2011 does not create an enforceable obligation (Section 34177.3(d)). Serious questions remain as to when the Dissolution Act took effect in late June 2011 (at which time the power to enter into most new redevelopment agreements was suspended), and whether the Legislature can retroactively alter that point of effectiveness in a way that would impair contracts validly entered into at the time of entry (which could, in turn, constitute a constitutionally flawed retroactive impairment of such contract). Also, if a Dissolved RDA had entered into a valid enforceable obligation prior to June 28, 2011 (or whatever point the Dissolution Act actually became effective) that obligated it to enter into a subsequent agreement after the effectiveness of the Dissolution Act, this provision of AB 1484 would likewise seem to constitute a constitutionally flawed impairment of the initial valid enforceable obligation, by preventing the effectiveness of the subsequent contract.

AB 1484 also declares that redevelopment agencies that opted to participate in the Voluntary Alternative Redevelopment Program (ABx1 27, that was subsequently found unconstitutional by the Supreme Court) did not receive a grace period to undertake new activities after the suspension date in the Dissolution Act (Section 34177.3(d)).

6. DOF Budget and Consultants. AB 1484 appropriates \$22 million to the DOF (of which up to \$2 million may be allocated to the State court system) for work associated with applicable portions of the Dissolution Act (uncodified Section 38 of AB 1484). In addition, the DOF is authorized to hire auditors, lawyers, and other types of advisors and consultants to assist, advise and represent the DOF in matters related to the Dissolution Act, and in doing so may avoid certain State law procedures for hirings.

PART III.  
AB 1484 MILESTONE ACTIONS

Following is a checklist of upcoming key milestone actions under the Dissolution Act as amended by AB 1484.

<u>Date</u>	<u>Action</u>
July 9, 2012	Successor Agency to receive from the CAC determination of amount owed, if any, for distributions pursuant to the Section 34183(a)(4) for the initial ROPS period (Section 34183.5(b)(2)(A)).
July 12, 2012	Successor Agency to pay to the CAC any amounts identified as owed to the taxing entities (Section 34183.5(b)(2)(A)).
July 16, 2012	The CAC distributes to the taxing entities amounts received from the Successor Agency on July 12, 2012 (Section 34183.5(b)(2)(A)).
July 18, 2012	The DOF can order offset of sales and use tax due to Sponsoring Community if the Successor Agency has failed to make payments due on July 12, 2012 (Section 34183.5(b)(2)(A)).
August 1, 2012	Housing Successor must submit to DOF list of all housing assets transferred to it by the Dissolved RDA, with explanation of how assets meet criteria set forth in law. DOF to prescribe format for list (Section 34176(a)(2)).
August 10, 2012	Housing Successor provides notice to the Successor Agency of any designations of use or commitments of funds specified in 34176(g)(1)(A) that the Housing Successor empowers the Successor Agency to retain (Section 34179.6(c)).
September 1, 2012	The Successor Agency submits the ROPS for January 1, 2013 through June 30, 2013 to the DOF after Oversight Board approval (Section 34177(m)). Note, the Successor Agency will be assessed a \$10,000 per day penalty for failure to timely submit the ROPS (Section 34177(m)(2)).

<b><u>Date</u></b>	<b><u>Action</u></b>
September 11, 2012	If the Successor Agency has not submitted a ROPS, the maximum administrative cost allowance for the fiscal year covered by the ROPS will be reduced 25% (Section 34177(m)).
October 1, 2012	The Successor Agency to provide to the Oversight Board, the CAC, the DOF, and the SCO results of the 34179.5 review for the LMIHF balances of a Dissolved RDA conducted by a licensed accountant. Accountant must be approved by the CAC (Section 34179.6(a)).
October 1, 2012	The CAC to complete agreed-upon procedures audit of each Dissolved RDA (Section 34182(a)(1)).
October 1, 2012	The CAC to provide notice to the Successor Agency of any objections to items included on the Third ROPS (Section 34182.5).
October 1, 2012	The CAC to prepare and provide estimates to the DOF and fund recipients of amounts to be allocated and distributed from RPTTF on January 2, 2013 for Third ROPS period (Section 34182(c)(3)).
October 1, 2012	The CAC to report to the SCO and the DOF specified information about property tax distributions (Section 34182(d)).
October 5, 2012	The CAC to provide to the SCO and the DOF results of agreed-upon procedures audit of each Dissolved RDA (Section 34182(b)).
October 15, 2012	The Oversight Board to review, approve and transmit the results of the 34179.5 Review for the LMIHF account balances of the Dissolved RDA and notify the CAC and the DOF (Section 34179.6(c)). Note, that the Oversight Board must hold a public session at least five business days in advance of the meeting to consider approval of the Review (Section 34179.6(b)).
No later than November 9, 2012	The DOF completes review of 34179.5 Review of LMIHF balances and reports findings, determinations, and decisions to overturn Oversight Board decision to allow retention of Successor Agency assets (Section 34179.6(d)).

<b><u>Date</u></b>	<b><u>Action</u></b>
Within 5 days of receipt of initial determination from the DOF	Successor Agency/Sponsoring Community deadline to request meet and confer with DOF over any dispute regarding amount of the LMIHF to be distributed to Taxing Entities under the 34179.5 Review process (Section 34179.6(e)). The DOF must meet and confer with the Successor Agency and confirm or modify findings within 30 days of request (Section 34179.6(e)).
Within 5 days of receipt of final determination from the DOF	The Successor Agency to transfer to the CAC the LMIHF balances determined to be available pursuant to Section 34179.5 Review of the LMIHF. Sponsoring Community sales and use tax may be offset if funds are not transferred (Section 34179.6(f)).
December 1, 2012	The Successor Agency reports to the CAC if total amount of available revenues (including RPTTF, other revenues, proceeds from sale of assets) will be insufficient to fund enforceable obligations (Section 34183(b)).
December 1, 2012	The CAC provides the DOF report specifying amount remitted by the Successor Agency pursuant to the 34179.5 Review of LMIHF balances (Section 34179.6(g)).
December 15, 2012	The Successor Agency submits to the Oversight Board, the CAC, the DOF, and the SCO results of review required under 34179.5 with respect to all other fund and account balances of a Dissolved RDA (Section 34179.6(a)).
January 2, 2013	The CAC to make distributions from the RPTTF for the Third ROPS period (January-June 2012) (Section 34183(a)(2)).
January 12, 2013	The CAC to provide a report to the DOF regarding most recent distributions from the RPTTF (Section 34283(e)).
January 15, 2013	The Oversight Board to review, approve and transmit the results of the 34179.5 Review for all other fund and account balances of a Dissolved RDA and notify the CAC and the DOF of determination (Section 34179.6(c)). Note, that the Oversight Board must hold a public session at least five business days in advance of the meeting to consider approval of the Review (Section 34179.6(b)).
March 3, 2013	Successor Agency submits ROPS for July 1, 2013 through December 31, 2013 to DOF after Oversight Board approval (Section 34177(m))



<b><u>Date</u></b>	<b><u>Action</u></b>
No later than April 1, 2013	The DOF completes reviews of 34179.5 Review of other fund balances and reports findings, determinations and decisions to overturn Oversight Board decision to allow retention of Successor Agency assets. (Section 34179.6(a)).
April 1, 2013	The CAC provides estimates to the DOF and all fund recipients of amounts to be allocated and distributed from the RPTTF on June 1 for the July 1, 2013 through December 31, 2013 ROPS period (Section 34182(c)(3)).
Within 5 days of receipt of initial determination from the DOF	Successor Agency/Sponsoring Community deadline to request meet and confer with the DOF over any dispute regarding amount of other fund balances to be distributed to the taxing entities under 34179.5 Review process. The DOF must meet and confer with Successor Agency and confirm or modify findings within 30 days of request (Section 34179.6(e)).
Within 5 days of receipt of final determination from the DOF	The Successor Agency to transfer to the CAC cash and other assets determined to be available pursuant to Section 34179.5 Review of other funds (if meet and confer process is complete). Sponsoring Community sales and use tax may be offset for unfunded amounts (Section 34179.6(f)).
April 20, 2013	The CAC provides the DOF a report specifying the amount remitted by Successor Agencies pursuant to the Section 34179.5 Review of other balances (Section 341796(g)).
May 1, 2013	The Successor Agency reports to the CAC if total amount of available revenues (including RPTTF, other revenues, proceeds from sale of assets) will be insufficient to fund enforceable obligations (Section 34183(b)).
June 1, 2013	The CAC to make distributions from the RPTTF for the ROPS period July-December 2013 (Section 34284(c)).





## Oversight Board of the Successor Agency City of Foster City

Date: August 8, 2012  
To: Chair and Members of the Oversight Board  
Via: James C. Hardy, City Manager  
From: Steve Toler, Assistant City Manager  
Subject: A Resolution Approving a Loan Agreement between the City of Foster City and the Successor Agency City of Foster City in Accordance with the Provisions of California Health & Safety Code (HSC) §34173(h)

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### **RECOMMENDATION**

It is recommended that the Oversight Board adopt the attached resolution approving a Loan Agreement between the Successor Agency and the City of Foster City for purposes of advancing funds for approved administrative costs, enforceable obligations, or project-related expenses.

### **EXECUTIVE SUMMARY**

AB 1484 (the Redevelopment Trailer Bill) provides that a city that formed a redevelopment agency may loan funds to the successor agency for administrative costs, enforceable obligations, or project-related expenses. The Successor Agency anticipates inadequate cash flow from the Redevelopment Property Tax Trust Fund to fulfill the Agency's enforceable obligations in the January to June 2013 Recognized Obligations Payment Schedule (ROPS) period. Furthermore, the City will need to loan funds to the Successor Agency to pay for expenses related to hiring an independent certified public accounting firm to conduct the due diligence review of unobligated fund balances required under AB 1484 in order for the Successor Agency to fulfill those obligations.

The attached Loan Agreement, if approved by the Oversight Board, would allow the City to loan funds to the Successor Agency for these types of purposes upon the prior approval of the Oversight Board and the Department of Finance.

### **BACKGROUND**

On June 12, 2012, the Oversight Board approved an amended ROPS for the July to December 2012 period that included a Sinking Fund totaling \$120,000 in order to have the County Controller set aside sufficient tax increment to allow the Agency to

fulfill anticipated obligations in future ROPS periods. On June 25, 2012, staff received notice that the State Department of Finance (DOF) had rejected the Sinking Fund amounts.

On June 28, 2012, AB 1484 was enacted by the State. One of the provisions included in that legislation is § 34173(h), which allows cities to loan funds to successor agencies:

*The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion, but the receipt and use of these funds shall be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of those loans. [HSC 34173(h)]*

On July 2, 2012, staff spoke with Evelyn Suess, Auditor/Evaluation Supervisor with the DOF, in regards to the rejection of the Sinking Fund in the aforementioned ROPS and in light of AB 1484. Her response (attached to this staff report) indicated that the provisions of §34173(h) would provide relief to the Successor Agency by providing a mechanism to ensure that it did not default on its enforceable obligations.

## **ANALYSIS**

Staff has prepared a draft Loan Agreement for Oversight Board consideration. Key terms and provisions in the Loan Agreement are as follows:

- Term – The term of the Loan Agreement will run through December 31, 2029, by which time the Successor Agency anticipates it will have met the former Redevelopment Agency's outstanding enforceable obligations under applicable third-party agreements.
- Credit Limit and Loan Draws – the Loan Agreement limits the maximum cumulative amount of outstanding loans to Two Hundred Fifty Thousand Dollars (\$250,000). Loan Draws may be made on the Loan based upon Oversight Board and DOF approval as evidenced by approval of the applicable ROPS.
- Loan Repayment – AB 1484 prohibits a successor agency from beginning to repay loans owed to a city until the successor agency has been issued a finding of completion by DOF<sup>1</sup>, which would not be granted until the successor agency completes all required due diligence reviews specified in the legislation (namely, audits of Low- and Moderate-Income Housing funds and other fund and account balances) and makes any payment to taxing entities required pursuant to the Dissolution Act and AB 1484. Assuming

<sup>1</sup> HSC § 34191.4

those processes go relatively smoothly, staff anticipates that loan repayments could begin in FY 2013-2014. Thereafter, loan repayments shall be made within five (5) business days of the Successor Agency receiving from the Redevelopment Property Tax Trust Fund tax increment necessary to make such payments.

- Interest – In accordance with the provisions of HSC §34191.4, the interest rate may not exceed the interest rate earned by funds on deposit with the Local Agency Investment Fund (LAIF). LAIF publishes a daily and monthly earnings rate. The interest rate will be based upon the monthly LAIF interest earnings rate published on the LAIF website for the most recently published month(s) during the time in which the loan draw was outstanding.
- City's Obligations – The City will have no obligation to advance funds under the terms of the Loan Agreement without the Oversight Board and DOF approving the advance of those funds as evidenced by the approval of the applicable ROPS.

Subject to the Oversight Board approval of this Loan Agreement, staff will then forward this item onto the City Council for their consideration at their next scheduled meeting, which is September 10, 2012 with a recommendation for approval.

**Attachments:**

- E-Mail dated July 3, 2012 from Evelyn Suess from DOF "Foster City ROPS Review"
- Resolution
- Loan Agreement between Successor Agency City of Foster City and the City of Foster City

## Steve Toler

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**From:** Suess, Evelyn <Evelyn.Suess@dof.ca.gov>  
**Sent:** Tuesday, July 03, 2012 18:06  
**To:** Steve Toler  
**Cc:** Dunham, Brian; Stacy, Zachary; 'Shirley Tourel (STourel@smcgov.org)'; Jim Hardy; Lin-lin Cheng; Curtis Banks; 'Rafael Mandelman (rmandelman@bwslaw.com)'; 'Craig Labadie (labadielaw@gmail.com)'  
**Subject:** RE: Foster City ROPS Review

Hello Steve, yes. This is an option the Successor Agency can take to ensure compliance with an obligation that has been deemed enforceable.

### [Evelyn Suess](#)

Auditor/Evaluation Supervisor | California Department of Finance | 📞 916.322-2285 Ext. 3179 | 📍 915 L St., Sacramento, CA 95814

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🌱 Please conserve paper. Think before you print.

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**From:** Steve Toler [mailto:stoler@fostercity.org]  
**Sent:** Monday, July 02, 2012 4:16 PM  
**To:** Suess, Evelyn  
**Cc:** Dunham, Brian; Stacy, Zachary; 'Shirley Tourel (STourel@smcgov.org)'; Jim Hardy; Lin-lin Cheng; Curtis Banks; 'Rafael Mandelman (rmandelman@bwslaw.com)'; 'Craig Labadie (labadielaw@gmail.com)'  
**Subject:** FW: Foster City ROPS Review

**Evelyn – thanks for taking some time with me this afternoon to discuss the attached response from your office regarding the rejection of the sinking funds that we proposed in regards to ensuring that the enforceable obligations the Successor Agency has with its developers will be met in full.**

**Per our conversation, our issue is that the developer subsidies for both the Hillsdale/Gull and Marlin Cove project areas call for the subsidies to be paid to the developers in around the June timeframe each year. Those subsidies are based upon an evaluation of their performance under the terms of their respective DDAs, and take into consideration the tax increment that was collected on the underlying properties in a tax year. ABx1 26 looks only at six-month windows in terms of property tax collections and distributions to fulfill obligations on the subsequent ROPS period. As we discussed, if funds were not somehow either withheld or loaned to the successor agency, there would not be sufficient tax increment provisioned in the ROPS period in which these obligations are due to the developers.**

**Based upon our conversation, and in our review of AB 1484 approved by the Legislature and Chaptered on June 27 (“Trailer Bill”), California Health & Safety Code §34173(h) indicates as follows:**

*The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion, but the receipt and use of these funds shall be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of those loans.*

Based upon the provisions of that section, and our conversation, you believed that it would be appropriate for the City of Foster City to loan funds to the Successor Agency in the January to June 2013 ROPS period to cover the portion of the developer subsidy that would not otherwise be available through RPTTF funds remitted to the Successor Agency for that period. The developer subsidy as reported on the ROPS would be broken into two separate line-items as to funding sources: 1) RPTTF, and 2) City Loan under §34173(h). In the July to December 2013 ROPS, then, an item would be included in the ROPS for the loan repayment back to the City (plus any interest agreed to between the Successor Agency and the City). This approach would allow the developers to receive the enforceable obligation to which they are entitled (January to June ROPS), and would allow the City to be reimbursed for the advance to the Successor Agency (July to December ROPS).

Would you please reply back to me that this is a valid approach for us to take in order for the Successor Agency to fulfill its obligations to its developers? Based upon your response, we will move forward with recommending a loan program with the Oversight Board as part of its consideration of the January to June 2013 ROPS that will be brought before them in August 2012.

Thanks, and I look forward to your reply.

**Steve Toler**  
Assistant City Manager  
City of Foster City

**Secretary to the Oversight Board**  
Successor Agency City of Foster City

---

**From:** Stacy, Zachary [<mailto:Zachary.Stacy@dof.ca.gov>]  
**Sent:** Monday, June 25, 2012 18:28  
**To:** Steve Toler  
**Cc:** Jim Hardy; 'Robyn rose'; 'Shirley Tourel'  
**Subject:** Foster City ROPS Review

Pursuant to Health and Safety Code (HSC) section 34177 (l) (3), you submitted an Oversight Board approved Recognized Obligation Payment Schedule (ROPS) to the California Department of Finance (Finance). Finance recently contacted you to get further clarification for items listed in the ROPS.

There are certain items listed in your ROPS that we do not believe qualify as Enforceable Obligations. Please see the attached document:

## Zach Stacy

Finance Budget Analyst | California Department of Finance | 📞 916.322-2263 Ext. 2444 | 📄 915 L Street - 8th floor, Sacramento, CA 95814

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

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY CITY OF FOSTER CITY APPROVING A LOAN AGREEMENT WITH THE CITY OF FOSTER CITY IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA HEALTH & SAFETY CODE §34173(H)

SUCCESSOR AGENCY CITY OF FOSTER CITY

WHEREAS, the Successor Agency may from time-to-time have insufficient cash flow to fulfill commitments in the form of administrative costs, enforceable obligations, or project-related expenses; and

WHEREAS, California Health and Safety Code §34173(h) allows for the Successor Agency to borrow funds from the City of Foster City for such purposes subject to Oversight Board approval as reflected on a Recognized Obligation Payment Schedule approved by the Oversight Board; and

WHEREAS, the Oversight Board desires to enter into a Loan Agreement with the City of Foster City to provide the cash flow necessary to fulfill its obligations; and

WHEREAS, the terms and conditions incorporated into the attached Loan Agreement reflect the borrowing and repayment terms acceptable under the provisions of AB 1484.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency City of Foster City that the Loan Agreement between the Successor Agency City of Foster City and the City of Foster City, attached hereto and incorporated herein, is hereby approved.

PASSED AND ADOPTED as a resolution of the Oversight Board of the Successor Agency City of Foster City at the Regular Meeting held on the 8<sup>th</sup> day of August, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
DICK W. BENNETT, CHAIRPERSON

ATTEST:

\_\_\_\_\_  
STEVE TOLER, SECRETARY

## **LOAN AGREEMENT**

### **(Administrative Costs, Enforceable Obligations, Project-Related Costs)**

This Loan Agreement (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_, 2012, (“Effective Date”) by and between the City of Foster City, a California municipal corporation (“City”), and the Successor Agency City of Foster City (the “Successor Agency”).

### **RECITALS**

A. In accordance with AB 1X 26 (Stats. 2011, chap. 5, as amended by a decision filed by the California Supreme Court on December 29, 2011) (“Dissolution Act”), the former City of Foster City Community Development Agency (“Redevelopment Agency”) was dissolved, effective February 1, 2012, and the City Council of the City of Foster City determined that the City would serve as the successor agency to the former Redevelopment Agency.

B. The Dissolution Act, pursuant to Health and Safety Code Section 34177, tasks each successor agency with the responsibility, among other things, for winding down the dissolved redevelopment agency’s affairs, continuing to meet the former redevelopment agency’s enforceable obligations, overseeing completion of redevelopment projects and disposing of the assets and properties of the former redevelopment agency, all as directed by an oversight board established pursuant to Health and Safety Code Section 34179 (“Oversight Board”).

C. AB 1484 (Stats. 2012, chap. 26, filed with the Secretary of State on June 27, 2012) amended Health and Safety Code Section 34173(h) to provide that the city “that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city’s discretion, but the receipt and use of these funds shall be reflected on the Recognized Obligation

Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of those loans.”

D. The Successor Agency anticipates that, from time-to-time, there may be insufficient Redevelopment Property Tax Trust Fund balances to fulfill its obligations relative to administrative costs, enforceable obligations, or project-related costs.

E. The City and the Successor Agency desire to enter into this Agreement in order for the City, subject to prior Oversight Board approval, to advance funds to the Successor Agency to allow the Successor Agency to fulfill its obligations under the Dissolution Act, and for the Successor Agency to repay such advanced funds to the City.

## **AGREEMENT**

Section 1. Term. The term of this Agreement shall expire on December 31, 2029.

Section 2. Loan Draws; Maximum Loans Outstanding. The Successor Agency may borrow funds in the form of a loan draw (“Loan Draw”) from the City upon approval of the Oversight Board and Department of Finance (“DOF”), as may be evidenced by Oversight Board and DOF approval of a Recognized Obligation Payment Schedule including such loans. The maximum cumulative outstanding balance of such loans, excluding accrued interest, may not at any time exceed Two Hundred Fifty Thousand Dollars (\$250,000).

Section 3. Interest. Interest shall accrue on any loans made pursuant to Section 2 above based upon the Pooled Money Investment Account (PMIA) Average Monthly Effective Yields rate as published by the Local Agency Investment Fund for the months in which the Loan Draw was made (“Interest Rate”). Interest shall be calculated on a monthly basis based on the Interest Rate applicable for that month. Interest paid prior to the end of a calendar month shall be

accrued at the Interest Rate for the most recently published month available at the time of repayment.

Section 4. Enforceable Obligation. The obligation of the Successor Agency to repay the City loans made pursuant to this Agreement shall constitute an indebtedness and enforceable obligation of the Successor Agency under the Dissolution Act and AB 1484 to be included in the Recognized Obligation Payment Schedules to be prepared by the Successor Agency and approved by the Oversight Board.

Section 5. Terms of Repayment. The Successor Agency agrees to pay any amounts owed under this Agreement to the City together with accrued interest. The debt is due and payable within five (5) business days from the date on which the Successor Agency has funds available and allocable to it from the Redevelopment Property Tax Trust Fund or from other sources, which are not otherwise needed to make payments on other enforceable obligations, as set forth in the applicable Recognized Obligation Payment Schedule approved by the Oversight Board and DOF. All outstanding amounts owing under this Agreement shall become due and payable in full prior to expiration of this Agreement pursuant to Section 1.

Section 6. City Obligations. The City is under no obligation to advance funds to the Successor Agency pursuant to this Agreement without the express prior approval of the Oversight Board and DOF as indicated herein.

Section 7. Remedies. If either party defaults with regard to any of the provisions of this Agreement, the non-defaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of the notice of default the defaulting party shall be liable to the other party for damages caused by such default.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF FOSTER CITY  
a California municipal corporation

By \_\_\_\_\_  
Art Kiesel, Mayor

Attest:

\_\_\_\_\_  
Doris Palmer, City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Jean B. Savaree, City Attorney

- AND -

SUCCESSOR AGENCY CITY OF  
FOSTER CITY

By \_\_\_\_\_  
James C. Hardy, City Manager

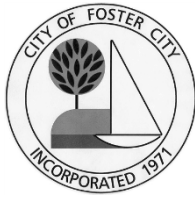
Attest:

\_\_\_\_\_  
Doris Palmer, City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
Gerald J. Ramiza,  
Successor Agency Special Counsel





## Oversight Board of the Successor Agency City of Foster City

Date: August 8, 2012  
To: Chair and Members of the Oversight Board  
Via: James C. Hardy, City Manager  
From: Steve Toler, Assistant City Manager  
Subject: A Resolution Authorizing the Successor Agency to Engage an Independent Certified Public Accountant to Conduct Agreed Upon Procedures on Low- and Moderate-Income Housing Funds and All Other Fund and Account Balances and Request a Loan Draw from the City of Foster City Necessary to Cover the Costs Associated With This Contract

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### **RECOMMENDATION**

It is recommended that the Oversight Board adopt the attached resolution authorizing the Successor Agency staff to execute an agreement with Vavrinek, Trine Day & Company, LLP, ("VTD LLP") to conduct agreed-upon procedures and issue an Independent Accountants' Report on Applying Agreed-Upon Procedures ("AUP") on Low- and Moderate Income Housing Funds ("LMIHF") and All Other Fund and Account Balances ("Other Funds") as required by the State Department of Finance under the terms of AB 1484.

### **EXECUTIVE SUMMARY**

AB 1484, the Redevelopment Trailer Bill enacted and chaptered into law on June 27, 2012 by the State Legislature, requires that the Successor Agency cause to have conducted a due diligence review of certain account balances in the LMIHF fund balances by an independent certified public accountant, a report of which must be presented to the Oversight Board, the County Controller, the State Controller's Office ("SCO"), and the State Department of Finance ("DOF") by October 1, 2012, and which the Oversight Board must approve and transmit to the DOF and County Controller by October 15. AB 1484 further requires a due diligence review of Other Funds be similarly conducted, a report of which must be issued by December 15, 2012, and approved by the Oversight Board and transmitted to the DOF and County Controller by January 15, 2013.

VDT LLP is the City of Foster City's independent certified public accounting firm and will be conducting an audit on the City's financial statements, including funds held on deposit on behalf of the Successor Agency. VDT LLP is well-versed in the provisions

of California Redevelopment Law, ABx1 26 (the original Redevelopment Dissolution Act), and AB 1484. They also serve on the SCO / DOF's Committee representing the profession in regards to the AUP's required under AB 1484. The State has yet to finalize its standard AUP's in compliance with AB 1484. Execution of an agreement with VDT LLP will be subject to AUP procedures finalized by the State, commitment from VDT LLP that they can fulfill the AUP obligations, and County Controller permission to hire VDT LLP to conduct these procedures. Staff believes that VDT LLP will be able to fulfill the County Controller's requirements for approval. As such, staff seeks approval of the Oversight Board to contract with VDT LLP to perform these procedures based upon the negotiated hourly rates under their contract with the City of Foster City at an amount not to exceed \$20,000. Should the costs appear to be higher than this amount based upon the issuance of the final standard AUP's from the State, staff will come back to the Oversight Board to seek further direction in regards to this contract.

Since the need to hire an audit firm to conduct this work was not anticipated in the July to December 2012 Recognized Obligation Payment Schedule (ROPS) approved by the Oversight Board on June 12, 2012, funding for this project will need to be requested from the City under the terms of a Loan Agreement between the City and the Successor Agency, also on this meeting's agenda. If the Loan Agreement is not approved by the Oversight Board, there will be insufficient funds to conduct this work and further direction will need to be provided by the Oversight Board to fund this work.

### **BACKGROUND and ANALYSIS**

In order for the Successor Agency to fulfill its obligations under AB 1484 and receive a "finding of completion" by the DOF, it must complete a due diligence review in the form of AUPs performed by independent certified public accountants (CPA) registered with the State Board of Accountancy and subject to the approval of the County Auditor-Controller.

The purpose of the AUPs is to have an independent CPA perform procedures to verify final balances in both the LMIHF funds and Other Funds for purposes of determining what should be distributed to taxing entities in closing out the activities of the former redevelopment agency.

The City contracts with VDT LLP to perform its independent audit on its financial statements. As part of that work, they will have to perform various tests and become familiar with the balances associated with the Successor Agency that will be reported on the City's financial statements. Staff believes that it would be prudent to have VDT LLP conduct the AUPs required by the State on behalf of the Successor Agency. Staff believes there is no conflict of interest in terms of VDT LLP conducting these procedures for the Successor Agency. VDT LLP also agrees that they believe there is no real or perceived conflict of interest in performing these procedures. As indicated above, execution of an agreement with VDT LLP will be subject to AUP procedures finalized by the State, commitment from VDT LLP that they can fulfill the



AUP obligations, and County Controller permission to hire VDT LLP to conduct these procedures. Staff believes that VDT LLP will be able to fulfill the County Controller's requirements for approval. Accordingly, staff recommends that the Oversight Board approve VDT LLP as the independent CPA firm to conduct this work.

The LMIHF AUP report is due from the independent CPA to the Oversight Board and the State by October 1, 2012, and must be approved by the Oversight Board and transmitted to the State by October 15, 2012. It is our understanding from representatives of VDT LLP that serve on the Statewide committee representing the profession in terms of establishing the standard AUPs that the State will likely issue its standardized AUP list by August 15, 2012. As such, VDT LLP at this time does not know the extent of the work that will be required by the State in this matter and, thus, the potential cost. Yet given the tight timeframe in terms of staff preparing the information such that VDT LLP can conduct the AUPs on that work, staff recommends that the Oversight Board authorize Successor Agency staff to execute an agreement with VDT LLP not to exceed \$20,000 for both the LMIHF and the Other Funds AUP reports. Negotiation of the amount will be based upon the hourly rates extended to the City as part of a competitive Request for Proposal process conducted in February 2012. Staff will report back to the Oversight Board what the final not-to-exceed limit was negotiated based upon the work required under the State's standard AUP list. If the amount, however, exceeds \$20,000, staff will bring back the contract to the Oversight Board in September for further direction.

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

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY CITY OF FOSTER CITY AUTHORIZING THE SUCCESSOR AGENCY TO OBTAIN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT SERVICES FROM VAVRINEK, TRINE, DAY & COMPANY, LLP TO CONDUCT AGREED UPON PROCEDURES ON LOW- AND MODERATE-INCOME HOUSING FUNDS AND ALL OTHER FUND AND ACCOUNT BALANCES IN ACCORDANCE WITH THE PROVISIONS OF AB 1484 IN AN AMOUNT NOT TO EXCEED TWENTY THOUSAND DOLLARS (\$20,000) AND REQUEST A LOAN DRAW FROM THE CITY OF FOSTER CITY UNDER THE TERMS OF THE LOAN AGREEMENT BETWEEN THE CITY AND THE SUCCESSOR AGENCY SUFFICIENT TO COVER THE COSTS ASSOCIATED WITH THIS CONTRACT

SUCCESSOR AGENCY CITY OF FOSTER CITY

WHEREAS, AB 1484 was enacted by the State Legislature on June 27, 2012 that requires successor agencies to hire an independent certified public accounting firm to conduct certain due diligence review procedures on certain assets held in Low- and Moderate-Income Housing Funds (LMIHF) and All Other Funds and Account Balances; and,

WHEREAS, those due diligence review procedures will result in a Report on Agreed-Upon Procedures ("AUPs") issued by an independent certified public accounting firm; and,

WHEREAS, the State will issue a standard AUPs checklist for use by independent certified public accounting firms on or about August 15, 2012; and,

WHEREAS, the deadline for submittal of the report on LMIHF funds by the independent certified public accounting firm to the Oversight Board, the County Controller, the State Controller's Office, and the State Department of Finance is October 1, 2012; and,

WHEREAS, the Oversight Board must approve the report by October 15, 2012; and,

WHEREAS, the City of Foster City contracts with Vavrinek, Trine, Day & Company, LLP ("VDT LLP") as its independent certified public accounting firm that is well-versed in California Redevelopment Law, ABx1 26 (The Redevelopment Dissolution Act), and AB 1484 (The Redevelopment Trailer Bill); and,

WHEREAS, it is in the best interest of the Successor Agency to engage VDT LLP to perform the AUPs that are forthcoming from the State; and,

WHEREAS, it is believed that a conservative estimate of \$20,000 is sufficient to cover the costs associated with this work; and,

WHEREAS, neither the Recognized Obligation Payment Schedule (“ROPS”) nor the Administrative Budget approved for the July to December 2012 period by the Oversight Board on June 12, 2012, anticipated the need to hire an independent certified public accounting firm to do this type of work; and,

WHEREAS, the Successor Agency will need to borrow funds from the City of Foster City under the terms of the Loan Agreement that it will include in the ROPS for the period January to June 2013.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency City of Foster City that:

1. Successor Agency Staff is hereby authorized to execute an agreement with Vavrinek, Day, Trine & Company, LLP to perform Agreed-Upon Procedures as issued by the State of California and to issue a report thereon for both the LMIHF and All Other Funds and Account Balances with a contract amount not to exceed Twenty Thousand Dollars (\$20,000)
2. The Oversight Board hereby requests that funds sufficient to cover the costs associated with this contract be borrowed from the City of Foster City under the terms of the Loan Agreement between the City and the Successor Agency
3. The Successor Agency shall incorporate and recognize an enforceable obligation in the January to June 2013 Recognized Obligation Payment Schedule to reimburse the City of Foster City for the costs associated with this contract.

PASSED AND ADOPTED as a resolution of the Oversight Board of the Successor Agency City of Foster City at the Regular Meeting held on the 8<sup>th</sup> day of August, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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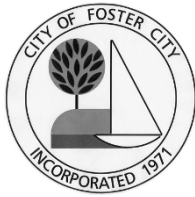
DICK W. BENNETT, CHAIRPERSON

ATTEST:

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STEVE TOLER, SECRETARY





## Oversight Board of the Successor Agency City of Foster City

Date: August 8, 2012  
To: Chair and Members of the Oversight Board  
Via: James C. Hardy, City Manager  
From: Steve Toler, Assistant City Manager  
Subject: Resolution Approving an Administrative Budget for the Period January 1 to June 30, 2013

---

### **RECOMMENDATION**

It is recommended that the Oversight Board adopt the attached resolution approving an Administrative Budget for the Successor Agency for the period January 1 to June 30, 2013.

### **EXECUTIVE SUMMARY**

Staff has prepared for Oversight Board consideration an Administrative Budget for the period January 1 to June 30, 2013 based upon the Administrative Budget adopted for the July 1 to December 31, 2012 period. The approval of AB 1484 requires that a Recognized Obligation Payment Schedule (ROPS) for the January 1 to June 30, 2013 period be submitted to the Department of Finance (DOF) for approval by September 1, 2012. This does not provide sufficient time as previously requested by the Board to review a "budget versus actual" financial analysis prior to adoption of a subsequent Administrative Budget. Staff recommends that the Administrative Budget amount totaling \$86,500 be approved for the January 1 to June 30, 2013 period, which is the same amount as the previous six-month period.

### **BACKGROUND**

H&S Code §34177(j) requires the Successor Agency to prepare an administrative budget for Oversight Board approval that includes:

1. Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period.
2. Proposed sources of payment for the costs identified in paragraph (1).

3. Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

The administrative budget is then presented as an administrative cost allowance in the ROPS for the six-month period [H&S Code §34177(l)(1)].

The Code defines “administrative budget” to mean “the budget for administrative costs of the successor agencies as provided in Section 34177” [§34171(a)]. There is no further definition of what comprises “administrative costs”, other than indicating that “the successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget.” [§34179(c)]

Further, H&S Code §34171(b) provides that the overall administrative cost allowance is “payable from property tax revenues of up to 5 percent of the property tax allocated to the successor agency for the 2011-12 fiscal year and up to 3 percent of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year thereafter; provided, however, that the amount shall not be less than two hundred fifty thousand dollars (\$250,000) for any fiscal year or such lesser amount as agreed to by the successor agency.”

## **ANALYSIS**

In preparing the Administrative Budget for the Successor Agency, and in light of the opinions provided by Craig Labadie to the Oversight Board at its April 26, 2012 Special Meeting, staff has identified three (3) cost categories that should be considered by the Oversight Board in adopting an Administrative Budget:

1. City Staff Costs
2. Professional Services and other costs in support of Successor Agency functions
3. Professional Services and other costs in support of the Oversight Board

For each cost category, the administrative costs should be allocated to each project area (i.e., Marlin Cove and Hillsdale/Gull) to appropriately identify net available tax increment so that the subsidies set forth in the respective Development and Disposition Agreements (DDA) for both project areas required to be paid to the developers are appropriately calculated and paid to those developers. For example, the grant subsidy payable to Miramar Apartments LLP under the Hillsdale/Gull project area are payable from net available tax increment after taking into consideration pass-through payments to taxing entities and administrative costs associated with overseeing the obligations of the project area. The allocation of costs is important to ensure that the appropriate grant subsidy is paid to the developer in accordance with the DDA for that project area.

Staff has developed an Administrative Budget that is presented as Attachment 1 to this Staff Report. Each of cost categories identified above are discussed below, with brief explanations of each item listed in the Administrative Budget.

#### City Staff Costs

Successor Agency staff are employees of the City of Foster City, and are covered under the terms of the Management Employees Compensation and Benefits Plan, with the exception of the Sr. Accounting Specialist position which is covered under the terms of the Memorandum of Understanding with the American Federation of State, County and Municipal Employees District 57 Local 829 (“AFSCME”). Both of these agreements are three-year agreements which expire June 30, 2013.

The salary and benefits costs for each identified employee supporting the Successor Agency are identified in the attached “Analysis of Directly Attributable Personnel Time Dedicated to Successor Agency Activities” (Attachment 2). A brief description of each item in that analysis is presented below:

- Chargeable Hourly Rate – This represents the individual’s hourly pay rate, their benefits overhead rate (which is developed based upon the benefits provided under the respective agreements with the employee groups and other employee-related costs such as workers compensation, Medicare, etc.), and the number of productive hours in a year (which is calculated for each employee based on 2,080 hours per less vacation and sick leave benefits provided)
- Administrative Overhead Rate – this rate considers the costs that support the employee’s ability to provide services. An overhead rate of 10% is assigned to each administrative employee, which considers the costs of services, supplies, and technology tools that support each employee’s ability to provide administrative support functions.
- Hours per Year – the number of hours per year have been estimated for each employee in two areas:
  - Oversight Board Administration – these are the hours for each employee dedicated to providing support to the Oversight Board as distinguished from supporting the obligations for each project area. While the original budget was prepared assuming that the Oversight Board would only need to meet quarterly, the enactment of AB 1484 requires more frequent meetings than that at this point. City staff began monitoring time spent on Successor Agency support on July 1, 2012, and will continue to monitor this time throughout the next fiscal year. The number of hours included herein for subsequent periods may need to be increased ratably for all positions other than Accounting Manager and Sr. Accounting Specialist.

- Marlin Cove / Hillsdale-Gull Related Activities – these are the number of hours in support of the initiatives to wind-down these respective project areas. While from a ROPS perspective there are relatively few financial payment obligations associated with these project areas, a significant amount of time and effort are required to enforce the developers' obligations under their respective DDA's. The time estimated herein represents time associated with administering those agreements and paying the obligations associated with those agreements, and also includes the accounting-related activities associated with maintaining the financial records for the Successor Agency in those areas.

The total costs identified in terms of staff support for the Oversight Board on an annualized basis is \$67,900. The amount attributable to the six-month ROPS period is \$33,950.

Professional Services and other costs in support of Successor Agency functions

There are four (4) costs identified on an annualized basis that will support the Successor Agency staff in administering the functions of the Successor Agency. A brief description of each item follows.

- Metropolitan Planning Group – (Total: 55,000; Allocated 70% to Marlin Cove, 30% to Hillsdale/Gull) This is a professional services agreement with a firm for a contract planner position that provides an average of 10 hours per week of consulting services to support the Community Development Director in overseeing the performance of the developers and their property managers in terms of their obligations under the respective DDA's for each property. A portion of this time is supporting the obligations of each developer in terms of fulfilling their affordable housing commitment. While the City has elected to retain the affordable housing assets and obligations of the former Agency, the tax increment of these project areas were designed to pay for the costs associated with ensuring developer compliance with the terms of their respective DDA's. As such, the City believes that these costs should be paid out of tax increment received from the former project areas.
- Burke, Williams & Sorensen – (Total: \$30,000; Allocated 60% to Marlin Cove, 40% to Hillsdale/Gull) This is a professional services agreement with this law firm to provide legal support in terms of enforcing compliance of the terms and conditions of the DDA's of the respective project areas, including affordable housing obligations as part of those DDA's. While the City has elected to retain the affordable housing assets and obligations of the former Agency, the tax increment of these project areas were designed to pay for the costs associated with ensuring developer compliance with the terms of their respective DDA's. As such, the City believes that these costs should be paid out of tax increment received from the former project areas.



- Fraser & Associates – (Total: \$2,500; Allocated 50% to each project area) This is a professional services agreement for financial consulting services to provide assistance in determining the developers' financial compliance with the provisions of the respective DDA's and to assist City staff in preparing the final analyses in terms of the subsidies due and payable to each developer.
- Housing Compliance Monitoring Software – (Total: \$7,500; allocated 50% to each project area) This represents the costs of a software application called "Housing Compliance Services", which assists City staff in determining the developers' compliance with the affordable housing obligations within the DDA for each project area. While the City has elected to retain the affordable housing assets and obligations of the former Agency, the tax increment of these project areas were designed to pay for the costs associated with ensuring developer compliance with the terms of their respective DDA's. As such, the City believes that these costs should be paid out of tax increment received from the former project areas.

The allocation of each item to each project area is based upon Successor Agency staff experience and professional judgment

Professional Services and other costs in support of the Oversight Board

There is presently one cost identified for FY 2012-2013 that will support the Oversight Board in administering the responsibilities to the Successor Agency.

- Law Offices of Craig Labadie – (Total: \$10,000; Allocated 50% to each project area) This is a professional services agreement between the Successor Agency and this firm to provide legal support to the Oversight Board in fulfilling its responsibilities under ABx1 26 and under AB 1484.

Compliance with Law; Inclusion in ROPS

The overall proposed Administrative Budget represents costs that Staff believes are in compliance with the H&S Code. The total proposed Budget on an annualized basis is \$173,000. This amount is less than the \$250,000 baseline amount required under the legislation.

It is recommended that 50% of this total, or \$86,500, be included in the ROPS for the period January 1 to June 30, 2013, which is also on the agenda for consideration at this meeting. This is the same amount that was included in the ROPS for the July 1 to December 31, 2012 period.

The implementation of AB 1484 requires that the ROPS for the January to June 2013 period be submitted to the Department of Finance by September 1, 2012. The Oversight Board wished to have the opportunity to review financial analyses in regards to budget versus actual expenditures associated with the Administrative Budget prior to the adoption of the subsequent period's budget. However, the timing and requirements of AB 1484 preclude that analysis from taking place in time to

prepare the Administrative Budget for the subsequent period. Accordingly, staff recommends that the Administrative Budget remain the same for the January to June 2013 ROPS period as for the July to December 2012 period. Staff and the Oversight Board can then review financial analyses of the Administrative Budget in February 2013 in terms of preparing an Administrative Budget for the July to December 2013 period.

### **Attachments**

- Attachment 1: Proposed Administrative Budget – January 1 to June 30, 2013
- Attachment 2: Analysis of Directly Attributable Personnel Time Dedicated to Successor Agency Activities – FY 2012-2013

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

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY CITY OF FOSTER CITY APPROVING AN ADMINISTRATIVE BUDGET FOR THE PERIOD JANUARY 1, 2013 TO JUNE 30, 2013

SUCCESSOR AGENCY CITY OF FOSTER CITY

WHEREAS, California Health & Safety Code (“H&S Code”) §34177(j) requires the Successor Agency to prepare an administrative budget for Oversight Board approval that includes: 1) estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period; 2) proposed sources of payment for the costs identified in item 1; and, 3) proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity; and,

WHEREAS, H&S Code §34171(b) provides that the overall administrative cost allowance shall be payable from property tax revenues of up to 3 percent of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year; provided, however, that the amount shall not be less than two hundred fifty thousand dollars (\$250,000) for any fiscal year or such lesser amount as agreed to by the successor agency; and,

WHEREAS, an Administrative Budget has been prepared for the period January 1, 2013 to June 30, 2013 that incorporates the costs associated with administering the affairs of the Successor Agency.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency City of Foster City that the Administrative Budget for the Period January 1, 2013 to June 30, 2013 totaling \$86,500 is hereby approved.

BE IT FURTHER RESOLVED the Administrative Budget shall be incorporated into the Recognized Obligation Payment Schedule for the Period January 1, 2013 to June 30, 2013, with \$57,000 allocated to the Marlin Cove Project Area, and \$29,500 allocated to the Hillsdale/Gull Project Area.

PASSED AND ADOPTED as a resolution of the Oversight Board of the Successor Agency City of Foster City at the Regular Meeting held on the 8<sup>th</sup> day of August, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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DICK W. BENNETT, CHAIRPERSON

ATTEST:

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STEVE TOLER, SECRETARY

**Successor Agency City of Foster City  
Proposed Administrative Budget  
For the Period January 1, 2013 to June 30, 2013**

**Attachment 1**

Item	Description	Total Cost	Cost Projections Prepared on an Annualized Basis			
			Marlin Cove Project Area		Hillsdale/Gull Project Area	
			% Allocation	\$ Allocation	% Allocation	\$ Allocation
<b>City Staff Costs</b>						
City of Foster City - Administrative Support	Administrative support services, including Oversight Board support, financial management, affordable housing compliance and monitoring, etc.	67,900	70%	47,530	30%	20,370
<b>Professional Services and other costs in support of Successor Agency functions</b>						
Metropolitan Planning Group	10 hours per week of consulting services to provide administration support to staff in overseeing the obligations of the former Agency, including oversight of the Marlin Cove, Hillsdale / Gull, and those obligations from the prior Project Area One for which no future tax increment or other revenue sources are available to support those obligations.	55,000	70%	38,500	30%	16,500
Burke, Williams & Sorensen	Legal consulting services relative to administering the obligations under the Marlin Cove and Hillsdale/Gull project areas as well as obligations under the former Project Area One project area for which no future tax increment or other revenues sources are available to support those obligations.	30,000	60%	18,000	40%	12,000
Fraser & Associates	Financial consulting related to net tax increment calculations on the affordable housing covenants under the DDAs for the Marlin Cove and Hillsdale/Gull Project Areas.	2,500	50%	1,250	50%	1,250
Housing Compliance Monitoring Software	Software to assist in managing compliance with affordable housing commitments for the Marlin Cove and Hillsdale/Gull project areas, and the obligations under the former Project Area One project area for which no future tax increment or other revenues are available to support those obligations.	7,500	50%	3,750	50%	3,750
<b>Professional Services and other costs in support of the Oversight Board</b>						
Law Offices of Craig Labadie	Legal consulting services to the Oversight Board	10,000	50%	5,000	50%	5,000
<b>Total Administrative Cost Allowance Request</b>		<b>Annual</b>				
		<b>172,900</b>		<b>114,030</b>		<b>58,870</b>
		<b>Say</b>		<b>114,000</b>		<b>59,000</b>
	<b>Administrative Budget for the period January 1, 2013 to June 30, 2013</b>	<b>86,500</b>		<b>57,000</b>		<b>29,500</b>

**Successor Agency City of Foster City**

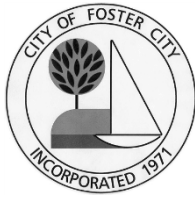
Attachment 2

**Analysis of Directly Attributable Personnel Time Dedicated to Successor Agency Activities  
For the Period January 1, 2013 to June 30, 2013**

Cost Projections Prepared on an Annualized Basis								
			Oversight Board Administration		Marlin Cove / Hillsdale-Gull Related Activities		Total	
Position	Chargeable Hourly Rate	10% Add'l Admin Overhead Rate	# Hours per Year		# Hours per Year		#	
				\$		\$		\$
City Manager	\$ 221.34	10%	20	4,869	20	4,869	9,739	
Assistant City Manager	\$ 176.46	10%	60	11,646	60	11,646	23,293	
Management Assistant	\$ 72.42	10%	30	2,390	20	1,593	3,983	
Community Development Director	\$ 144.84	10%	12	1,912	80	12,746	14,658	
Finance Director	\$ 160.14	10%	12	2,114	32	5,637	7,751	
Accounting Manager	\$ 102.00	10%	4	449	40	4,488	4,937	
Sr. Accounting Specialist	\$ 73.44	10%	4	323	40	3,231	3,554	
<b>Total</b>			142	23,703	292	44,211	67,915	
			<b>say</b>	<b>23,700</b>		<b>44,200</b>	<b>67,900</b>	

Note: Hours estimate is based upon experience and professional judgment assuming the wind-down of Agency activities. These are hours estimates for FY 2012-2013.

Note2: It is assumed that after the ROPS for January to June 2013 is approved, Oversight Board meetings will pare down to once every quarter on average.



## Oversight Board of the Successor Agency City of Foster City

Date: August 8, 2012  
To: Chair and Members of the Oversight Board  
Via: James C. Hardy, City Manager  
From: Steve Toler, Assistant City Manager  
Subject: Resolution Approving a Recognized Obligations Payment Schedule for  
the Period January 1 to June 30, 2013

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### **RECOMMENDATION**

It is recommended that the Oversight Board adopt the attached resolution approving a Recognized Obligation Payment Schedule (“ROPS”) for the Period January 1 to June 30, 2013.

### **EXECUTIVE SUMMARY**

In accordance with California Health & Safety Code (“H&S Code”) §34177(l), the Successor Agency has prepared a ROPS for the period January 1 to June 30, 2013. The ROPS is reflective of the actions taken by the Oversight Board and approved by the Department of Finance (DOF) relative to the ROPS approved for the periods January 1 to June 30, 2012 and July 1 to December 31, 2012, and includes the obligations to the San Mateo Union High School District (SMUHSD), PWM Residential Ventures LLC and Prometheus Development.

The proposed ROPS is reflective of the new format required by the DOF to be used. This format was issued on August 1, 2012. There are significant questions and concerns being expressed by Successor Agencies across the state relative to the information being requested. There is a slight risk that the ROPS may have to be resubmitted for Oversight Board approval pending responses to questions of the DOF regarding the report prior to the due date of September 4, 2012. Staff recommends approval of the report at this time subject to the responses received from the DOF, but if any material changes are required, staff will consult with the Chair to determine if a Special Meeting of the Oversight Board should be called prior to August 31, 2012 to consider amendments to the ROPS prior to its submittal to the County Controller and the State.

In addition, the Oversight Board is asked to consider the approval of an Administrative Budget under a separate agenda item at this meeting. The proposed amount totaling \$86,500, subject to approval by the Oversight Board, has been incorporated as an "Administrative Cost Allowance" on the ROPS.

## **BACKGROUND**

H&S Code §34177(l) requires that the Successor Agency prepare a ROPS every six months that reflects the enforceable obligations and the administrative cost allowance of the Successor Agency that are payable during that timeframe. The ROPS is then submitted to the Oversight Board for approval. Once the ROPS is approved, it is forwarded to the County Controller's Office for the allocation of tax revenues to support the payment of enforceable obligations and administrative costs. It is also submitted to the State Department of Finance, which has the authority to review all of the items on the ROPS and request clarification and/or overturn the Oversight Board's actions relative to the ROPS.

## **ANALYSIS**

The Oversight Board previously approved a ROPS for the period January 1 to June 30, 2012 and July 1 to December 31, 2012. Based upon the discussions in terms of those prior ROPS, a new ROPS covering the period January 1 to June 30, 2013 has been prepared and is attached to this Staff Report.

On June 12, 2012, the Oversight Board approved an amended ROPS for the July 1 to December 31, 2012 period that incorporated a total of \$120,000 in sinking funds that would be withheld by the County Controller and remitted to the Successor Agency necessary to fulfill the obligations of the Development and Disposition Agreements with the developers of the Marlin Cove and Hillsdale/Gull project areas. On June 25, 2012, the Successor Agency received notice from the Department of Finance that the concept of a sinking fund was not appropriate for the payment of non-debt related enforceable obligations.

On June 27, 2012, AB 1484 was enacted by the State. One of the provisions within that legislation in § 34173(h) was to allow cities to loan funds to successor agencies as follows:

*The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion, but the receipt and use of these funds shall be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of those loans. [HSC 34173(h)]*



On July 2, 2012, staff spoke with Evelyn Suess, Auditor/Evaluation Supervisor with the DOF, in regards to the rejection of the Sinking Fund in the aforementioned ROPS and in light of AB 1484. Her response indicated that the provisions of §34173(h) would provide the relief the Successor Agency was seeking to ensure that it did not default on its enforceable obligations. Accordingly, as indicated below and under the assumption that the Oversight Board approves the Loan Agreement between the City of Foster City and the Successor Agency (also on this meeting's agenda), it will be necessary to draw funds from that Loan Agreement to allow the Successor Agency to fulfill its obligations to the developers.

That ROPS incorporated several enforceable obligations that were reviewed in detail. A brief summary of the items on this ROPS is provided below:

#### Project Area One

- SMUHSD – at the April 26, 2012 Board meeting, the Board requested that the District provide its opinion as to whether or not it would prefer that the entire remaining obligation be paid in one lump sum, or whether it desired to maintain the payment schedule as provided in the Stipulated Judgment. Short of a response from the District on that matter, the obligation of \$242,000 included in this ROPS represents 50% of the payment for FY 2012-2013 that is required under the Stipulated Judgment and Mutual Release between the former Agency and SMUHSD. The source of funds for this obligation is from the funds on deposit with the City under the terms of the Cooperative Services Agreement. No further tax increment is required to pay this obligation.

#### Marlin Cove Project Area

- PWM Residential Ventures LLC – these represent the estimated payments required under the terms of the Disposition and Development Agreement with the developer. The total outstanding obligations for the agency grant, affordable housing subsidy, and utility subsidy are incorporated into this ROPS based upon staff's best estimate of project property taxes on the project areas. *It must be noted that staff has not received final FY 2012-2013 tax projections from the County Controller's Office at the writing of this Staff Report. Should more current tax projections be received in time for the Oversight Board meeting, staff will update the draft ROPS prior to the Oversight Board's consideration of this item.* Due to the timing that these obligations must be paid (January to June 2013) compared with the timing of tax increment contributed to the Successor Agency (from July to December 2012 tax increment collected), it is estimated that \$60,000 will need to be borrowed under the terms of the Loan Agreement with the City of Foster City (also on this meeting's agenda) in order to fulfill the obligations to the developer. Repayment of those funds will be incorporated in the July to December 2013 ROPS for which RPTTF funds will be sufficient to fulfill the obligation.

- Administrative Cost Allowance – based upon the Administrative Budget presented to the Board under a separate agenda item at this meeting, the cost allowance of \$57,000 is presented on this ROPS. The source of payment of these funds will be from tax increment received from the Redevelopment Property Tax Trust Fund.

Hillsdale/Gull Project Area

- Prometheus Development – these represent the estimated payments required under the terms of the Disposition and Development Agreement with the developer. The total outstanding obligations for the affordable housing subsidy is incorporated into this ROPS based upon staff's best estimate of project property taxes on the project areas. *It must be noted that staff has not received final FY 2012-2013 tax projections from the County Controller's Office at the writing of this Staff Report. Should more current tax projections be received in time for the Oversight Board meeting, staff will update the draft ROPS prior to the Oversight Board's consideration of this item.* Due to the timing that this obligation must be paid (January to June 2013) compared with the timing of tax increment contributed to the Successor Agency (from July to December 2012 tax increment collected), it is estimated that \$60,000 will need to be borrowed under the terms of the Loan Agreement with the City of Foster City (also on this meeting's agenda) in order to fulfill this obligation to the developer. Repayment of those funds will be incorporated in the July to December 2013 ROPS for which RPTTF funds will be sufficient to fulfill the obligation.
- Administrative Cost Allowance – based upon the Administrative Budget presented to the Board under a separate agenda item at this meeting, the cost allowance of \$29,500 is presented on this ROPS. The source of payment of these funds will be from tax increment received from the Redevelopment Property Tax Trust Fund.

New Format Prescribed by DOF on August 1, 2012; Deadline Clarified as September 4, 2012

At the end of the day on August 1, 2012, the DOF posted a new format of the ROPS on its website which they expect all Successor Agencies to follow in terms of a completed ROPS. DOF also clarified that the form is due to them on September 4, 2012, as September 1 is a Saturday.

Staff has discussed the updated form with the County Controller's Office. Of greatest concern to staff, the County Controller's Office, and other Successor Agencies in the State is the request for amounts that are anticipated to be available in RPTTF funds for the January to June 2013 ROPS period, which are based on projected RPTTF funds to be collected in the July to December 2012 period. The County Controller normally issues property tax estimates in mid-September when they have calculated tax amounts owed based on assessed valuation received from the Assessor's Office

in early July. Further, they must calculate the AB1290 pass-through payments and other amounts in accordance with ABx1 26 and AB 1484. These are complex calculations that will not be ready for publication until mid-September 2012.

Based upon discussion and advice of the County Controller's Office, staff has prepared an estimate as to the amount of RPTTF to be available for this ROPS period based upon the prior period's amounts and assessed valuation changes as obtained from the Assessor's Office. This amount has been incorporated into the Summary tab of the ROPS, with a footnote indicating that it is merely an estimate subject to receipt of the RPTTF calculations expected from the County in September 2012.

In discussing this matter with other Successor Agencies, there are questions being raised relative to some of the data being requested by the DOF in this new format. Staff has prepared the ROPS under the newly prescribed format to the best of its ability based upon its reading and intent of various provisions of ABx1 26, AB 1484, and instructions provided by the DOF. Staff has further requested clarification from the DOF in terms of the anticipated RPTTF amounts indicated above. Given the submittal deadline imposed by the State, staff recommends that the Oversight Board approve this draft of the ROPS at this meeting. Administratively, staff will hold off submitting the ROPS to the County Controller and the DOF until which time the DOF responds to questions raised by Successor Agencies in regards to the form, but no later than August 31, 2012. If there are any material changes necessary as a result of the DOF's response, staff will confer with the Chair to determine if a Special Meeting of the Oversight Board should be called prior to August 31, 2012 in order to approve any of those amendments prior to submittal.

Subject to approval of the attached resolution, the final ROPS will be transmitted to the San Mateo County Controller's Office and the State Controller's Office by the deadline of September 4, 2012, and will also be transmitted to the State Department of Finance for approval.

### **Attachment**

- Resolution
- Recognized Obligation Payment Schedule for the Period January 1 to June 30, 2013

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

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY CITY OF FOSTER CITY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JANUARY 1 TO JUNE 30, 2013

SUCCESSOR AGENCY CITY OF FOSTER CITY

WHEREAS, the Successor Agency has prepared a draft Recognized Obligation Payment Schedule for the period January 1 to June 30, 2013 (ROPS) pursuant to California Health & Safety Code (H&S Code) §34177; and,

WHEREAS, the Oversight Board has reviewed each line item on the ROPS to determine that it represents an enforceable obligation of the Successor Agency; and,

WHEREAS, the Oversight Board has adopted an Administrative Budget at its August 8, 2012 Regular Meeting and the administrative cost allowance reflected in the attached ROPS is consistent with the Administrative Budget approved by the Oversight Board; and,

WHEREAS, the attached ROPS is reflective of the enforceable obligations of the Successor Agency for the period January 1 to June 30, 2013.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency City of Foster City that the Recognized Obligation Payment Schedule for the Period January 1 to June 30, 2013, attached hereto and incorporated herein, is hereby approved.

BE IT FURTHER RESOLVED that the Secretary is instructed to transmit a copy of this resolution and the approved ROPS to the San Mateo County Controller's Office, the California Department of Finance, and the State Controller's Office as required by law before September 4, 2012.



PASSED AND ADOPTED as a resolution of the Oversight Board of the Successor Agency City of Foster City at the Regular Meeting held on the 8<sup>th</sup> day of August, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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DICK W. BENNETT, CHAIRPERSON

ATTEST:

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STEVE TOLER, SECRETARY

## Successor Agency Contact Information

Name of Successor Agency: Successor Agency City of Foster City  
County: San Mateo

Primary Contact Name: Steve Toler  
Primary Contact Title: Assistant City Manager / Secretary to  
Address: Oversight Board  
Contact Phone Number: 650-286-3214  
Contact E-Mail Address: [stoler@fostercity.org](mailto:stoler@fostercity.org)

Secondary Contact Name: Lin-Lin Cheng  
Secondary Contact Title: Finance Director  
Secondary Contact Phone Number: 650-286-3265  
Secondary Contact E-Mail Address: [Lcheng@fostercity.org](mailto:Lcheng@fostercity.org)





**SUMMARY OF RECOGNIZED OBLIGATION PAYMENT SCHEDULE**

Filed for the January 1, 2013 to June 30, 2013 Period

Name of Successor Agency: Successor Agency City of Foster City

	Total Outstanding Debt or Obligation
<b>Outstanding Debt or Obligation</b>	<b>\$ 7,529,000</b>
<b>Current Period Outstanding Debt or Obligation</b>	<b>Six-Month Total</b>
A Available Revenues Other Than Anticipated RPTTF Funding	362,000
B Enforceable Obligations Funded with RPTTF	399,000
C Administrative Allowance Funded with RPTTF	86,500
D Total RPTTF Funded (B + C = D)	485,500
Total Current Period Outstanding Debt or Obligation (A + B + C = E) <i>Should be same amount as ROPS form six-month total</i>	<b>\$ 847,500</b>
E Enter Total Six-Month Anticipated RPTTF Funding	485,500
F Variance (D - E = F) <i>Maximum RPTTF Allowable should not exceed Total Anticipated RPTTF Funding</i>	<b>\$ -</b>
<b>Prior Period (January 1, 2012 through June 30, 2012) Estimated vs. Actual Payments</b> (as required in HSC section 34186 (a))	
G Enter Estimated Obligations Funded by RPTTF <i>(Should be the same amount as RPTTF approved by Finance, including admin allowance)</i>	365,400
H Enter Actual Obligations Paid with RPTTF	330,258
I Enter Actual Administrative Expenses Paid with RPTTF	24,000
J Adjustment to Redevelopment Obligation Retirement Fund (G - (H + I) = J)	11,142
<b>K Adjustment to RPTTF</b>	<b>\$ 474,358.00</b>

Certification of Oversight Board Chairman:  
Pursuant to Section 34177(m) of the Health and Safety code,  
I hereby certify that the above is a true and accurate Recognized  
Obligation Payment Schedule for the above named agency.

**Dick W. Bennett**

Name

**Chair**

Title

Signature

**8-Aug-12**

Date

**Note: Item E - Total Six-Month Anticipated RPTTF Funding is estimated based upon the prior period's RPTTF calculations and incorporated based on DOF requirements. The County Controller's Office did not anticipate the need to, nor will they be able to logistically, prepare RPTTF Funding estimates prior to mid-September 2012. More accurate calculations will not be available until that time.**

Name of Successor Agency:

Successor Agency City of Foster City

County:

San Mateo

Oversight Board Approval Date: August 8, 2012

**RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III)  
January 1, 2013 through June 30, 2013**

Item #	Project Name / Debt Obligation	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2012-13	Funding Source								
									LMIHF	Bond Proceeds	Reserve Balance	Admin Allowance	RPTTF	Other	Six-Month Total		
<b>Grand Total</b>									\$ 7,529,000	\$ 1,176,000	\$ -	\$ -	\$ -	\$ 86,500	\$ 399,000	\$ 362,000	\$ 847,500
1	Stipulated Judgment	6/27/1991	6/30/2016	San Mateo Union High School District	Obligations under the Stipulated Judgment and Mutual Release between the Agency and SMUHSD dated June 27, 1991, payable through June 2016.	Project Area One	1,750,000.00	484,000.00							242,000	242,000	
2	DDA	2/22/2000	5/31/2014	PWM Residential Ventures LLC	Agency Grant to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through May 2014	Marlin Cove	220,000.00	110,000.00					50,000	60,000		110,000	
3	DDA	2/22/2000	1/31/2029	PWM Residential Ventures LLC	Affordable Housing Subsidy to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through January 2029	Marlin Cove	3,461,000.00	173,000.00					173,000			173,000	
4	DDA	2/22/2000	1/31/2029	PWM Residential Ventures LLC	Utility Subsidy to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through January 2029	Marlin Cove	897,000.00	45,000.00					45,000			45,000	
5	Administrative Cost Allowance	N/A	N/A	City of Foster City	Administrative Cost Allowance	Marlin Cove		114,000.00				57,000				57,000	
6	DDA	7/3/2000	6/30/2018	Prometheus Development	Affordable Housing Subsidy to Developer per the terms of the Disposition and Development Agreement for the Hillsdale/Gull Project (aka "Miramar Apartments") through June 2018	Hillsdale/Gull	1,201,000.00	191,000.00					\$ 131,000.00	60,000		191,000	
7	Administrative Cost Allowance	N/A	N/A	City of Foster City	Administrative Cost Allowance	Marlin Cove		59,000				29,500				29,500	
8																-	
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Name of Successor Agency:

Successor Agency City of Foster City

County:

San Mateo

**Pursuant to Health and Safety Code section 34186 (a)  
PRIOR PERIOD ESTIMATED OBLIGATIONS vs. ACTUAL PAYMENTS  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS I)  
January 1, 2012 through June 30, 2012**

Page/Form	Line	Project Name / Debt Obligation	Payee	Description/Project Scope	Project Area	LMIHF		Bond Proceeds		Reserve Balance		Admin Allowance		RPTTF		Other	
						Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual
<b>Grand Total</b>						\$ -	\$ -	\$ -	\$ -	\$ 186,500	\$ 183,617	\$ 24,000	\$ 24,000	\$ 341,400	\$ 330,258	\$ 618,220	\$ 574,989
1.00		Stipulated Judgment	San Mateo Union High School District	Obligations under the Stipulated Judgment and Mutual Release between the Agency and SMUHSD dated June 27, 1991, payable through June 2016.	Project Area One											475,000	475,000
1.00		DDA	Northwestern Mutual	Affordable housing subsidy under terms of the Owner Participation Agreement (OPA) for Pilgrim-Triton Project	Project Area One											-	-
1.00		Homeshare Program	Human Investment Project	Homeshare Program funding for LMI individuals under contract	Project Area One											13,500	6,750
1.00		Legal Counsel - Successor Agency	Burke, Williams & Sorensen	Legal counsel on retainer re affordable housing initiatives, administration and governance issues, via professional services agreement	Project Area One											13,000	15,223
1.00		Legal Counsel - Oversight Board	Law Offices of Craig Labadie	Legal counsel on retainer for the Oversight Board	Project Area One											10,000	6,652
1.00		Financial Consulting	Fraser & Associates	Financial consulting services via professional services agreement	Project Area One											4,500	\$ -
1.00		Affordable Housing Consulting	Metropolitan Planning Group	Consulting services on Below-Market-Rate Housing matters, under professional services agreement	Project Area One											9,000	12,502
1.00		Affordable Housing Services	Housing Endowment and Regional Trust of San Mateo County	Membership contract for regional construction, rehabilitation, acquisition of affordable housing and placement services to LMI residents and seniors	Project Area One											-	-
1.00		Property Maintenance	Angel Landscaping	Landscape maintenance agreement on Agency affordable housing units	Project Area One											6,000	5,100
1.00		Affordable Housing Services	Human Investment Project	Property Management Services, including incidental maintenance / repair expenses, associated with affordable housing existing units under contract	Project Area One											18,000	9,600
1.00		HOA Dues	Sand Harbour South	Homeowners' Association Dues for affordable housing existing unit at 920 Beach Park Blvd #37	Project Area One											3,000	3,206
1.00		HOA Dues	Emerald Bay of Foster City	Homeowners' Association Dues for affordable housing existing unit at 705 Emerald Bay	Project Area One											1,800	1,733
2.00		Property Maintenance	Terminix International	Pest control services under maintenance agreement for affordable housing existing units	Project Area One											1,500	300
2.00		Landscape Design Contract	Verde Design Inc.	Project design services for Synthetic Turf Capital Improvement Project at Sea Cloud Park S-3 and S-4	Project Area One											33,400	9,403
2.00		Administrative Cost Allowance	City of Foster City	Administrative Cost Allowance	Project Area One											29,520	29,520
3.00		DDA	PWM Residential Ventures LLC	Agency Grant to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through May 2014	Marlin Cove									110,000	109,794		
3.00		DDA	PWM Residential Ventures LLC	Affordable Housing Subsidy to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through January 2029	Marlin Cove									170,000	161,581		
3.00		DDA	PWM Residential Ventures LLC	Utility Subsidy to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through January 2029	Marlin Cove									44,000	43,883		P. 100

Page/Form	Line	Project Name / Debt Obligation	Payee	Description/Project Scope	Project Area	LMIHF		Bond Proceeds		Reserve Balance		Admin Allowance		RPTTF		Other	
						Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual
3.00		Legal Counsel - Successor Agency	Burke, Williams & Sorensen	Legal counsel on retainer re affordable housing initiatives, administration and governance issues, via professional services agreement	Marlin Cove									4,000	4,000		
3.00		Financial Consulting	Fraser & Associates	Financial consulting services via professional services agreement	Marlin Cove									1,250	200		
3.00		Auditing Professional Services	Vavrinek, Trine, Day & Co., LLP	Independent accountant and auditing services for former Agency audit as of January 31, 2012	Marlin Cove									4,000	4,000		
3.00		Director Fees	City of Foster City	Director fees to Agency Board members on a per-meeting basis	Marlin Cove									450	300		
3.00		Administrative Cost Allowance	City of Foster City	Administrative Cost Allowance	Marlin Cove							12,000	12,000				
4.00		DDA	Prometheus Development	Affordable Housing Subsidy to Developer per the terms of the Disposition and Development Agreement for the Hillsdale/Gull Project (aka "Miramar Apartments") through June 2018	Hillsdale/Gull					186,500	183,617						
4.00		Legal Counsel - Successor Agency	Burke, Williams & Sorensen	Legal counsel on retainer re affordable housing initiatives, administration and governance issues, via professional services agreement	Hillsdale/Gull									4,000	4,000		
4.00		Financial Consulting	Fraser & Associates	Financial consulting services via professional services agreement	Hillsdale/Gull									1,250	200		
4.00		Auditing Professional Services	Vavrinek, Trine, Day & Co., LLP	Independent accountant and auditing services for former Agency audit as of January 31, 2012	Hillsdale/Gull									2,000	2,000		
4.00		Director Fees	City of Foster City	Director fees to Agency Board members on a per-meeting basis	Hillsdale/Gull									450	300		
4.00		Administrative Cost Allowance	City of Foster City	Administrative Cost Allowance	Hillsdale/Gull							12,000	12,000				

