



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

Date: May 9, 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 Cooperation Agreement with the City of Foster City for Payment of FY 2012-2013 Annual Dues to the Housing Endowment and Regional Trust of San Mateo County

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### **RECOMMENDATION**

It is recommended that the Oversight Board approve the attached resolution authorizing the City Manager to execute an agreement between the Successor Agency and City of Foster City for payment of the FY 2012-2013 Annual Dues to the Housing Endowment and Regional Trust of San Mateo County (HEART).

### **EXECUTIVE SUMMARY**

At its April 26, 2012, the Oversight Board passed a motion with unanimous approval that the Successor Agency should enter in an agreement with the City of Foster City for the one-time payment of HEART Annual Dues for FY 2012-2013, and that such obligation shall be included in the Recognized Obligation Payment Schedule (ROPS) for the period July 1, 2012 to December 31, 2012. The attached agreement was drafted by the Successor Agency's legal counsel, Jerry Ramiza of Burke Williams & Sorensen, and was transmitted for review by the Oversight Board's legal counsel, Craig Labadie. The agreement will recognize the payment as an obligation of the Successor Agency as determined by the Oversight Board based upon its deliberations of the prior ROPS at its April 10, April 18 and April 26 meetings.

### **BACKGROUND and ANALYSIS**

The City of Foster City entered a Joint Powers Authority with other cities in San Mateo County in support of the creation of a regional trust that serves to provide affordable housing options for families in San Mateo County. HEART is the agency that was created and is funded by its member agencies. For the past several years, the former Foster City Community Development Agency had paid the annual dues on behalf of the City from the Agency's affordable housing funds. The City had, in good faith, assumed that the dues would continue to be paid for by the Agency.

The Joint Powers Agreement requires a member agency to provide notice of its intent to terminate its membership at least ninety (90) days prior to the start of the new fiscal year. Neither the City nor the Redevelopment Agency gave notice of an intent to terminate the City's membership in HEART. As such, the City will owe the HEART Dues Payment for the 2012-2013 fiscal year beginning July 1.

Pursuant to Health and Safety Code Section 34178(a) a successor agency may enter into agreements with a city that formed the redevelopment agency upon obtaining approval of its oversight board. The Oversight Board discussed the funding of this agreement for FY 2012-2013 and determined that the Successor Agency should enter into an agreement with the City in order for the Successor Agency to make the 2012-2013 HEART Dues Payment consistent with the established practice of the former Redevelopment Agency and in accordance with its inclusion on the ROPS for July to December 2012.

The attached resolution, if approved, would recognize this agreement as an enforceable obligation of the Successor Agency and would allow the Successor Agency to pay for the FY 2012-2013 HEART Dues from the funds deposited as part of the Affordable Housing Reimbursement Agreement between the City and the former Agency. The City Manager would execute the agreement on behalf of the Successor Agency.

Upon Board approval, the adopted resolution would be transmitted to the State Department of Finance and San Mateo County Controller's Office (as required for all Oversight Board actions). The agreement would be considered on the City Council's May 21, 2012 Regular Meeting agenda with a recommendation to approve the agreement.

### **Attachments**

- Resolution
- Cooperation Agreement (Housing Endowment and Regional Trust of San Mateo County Dues)with the City of Foster City

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

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY CITY OF FOSTER CITY APPROVING A COOPERATION AGREEMENT WITH THE CITY OF FOSTER CITY FOR THE PAYMENT OF ANNUAL DUES FOR FY 2012-2013 TO THE HOUSING ENDOWMENT AND REGIONAL TRUST OF SAN MATEO COUNTY

SUCCESSOR AGENCY CITY OF FOSTER CITY

WHEREAS, 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; and,

WHEREAS, 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”); and,

WHEREAS, Health and Safety Code Section 34179(i) states that oversight boards “have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188; and,

WHEREAS, the Housing Endowment and Regional Trust of San Mateo County (“HEART”) is a joint powers authority that provides services to member jurisdictions relative to construction, rehabilitation, and acquisition of affordable housing units, and the placement of low- and moderate- income seniors and other residents in affordable units; and,

WHEREAS, the City is a member of HEART and a signatory to the joint powers agreement establishing HEART (“Joint Powers Agreement”), and for each of the past five fiscal years, pursuant to the City and Redevelopment Agency’s annual budgetary approval process, the Redevelopment Agency has paid the City’s annual

HEART membership dues in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) (“HEART Dues Payment”); and,

WHEREAS, the Joint Powers Agreement requires a member agency to provide notice of its intent to terminate its membership at least ninety (90) days prior to the start of the new fiscal year; and,

WHEREAS, neither the City nor the Redevelopment Agency having given notice of an intent to terminate the City’s membership in HEART, the City will owe the HEART Dues Payment for the 2012-2013 fiscal year beginning July 1; and,

WHEREAS, pursuant to Health and Safety Code Section 34178(a) a successor agency may enter into agreements with a city that formed the redevelopment agency upon obtaining approval of its oversight board; and,

WHEREAS, the City and the Successor Agency desire to enter into this Agreement in order for the Successor Agency to make the 2012-2013 HEART Dues Payment consistent with the established practice of the former Redevelopment Agency, and the Oversight Board has approved execution of this Agreement as being fair and equitable and consistent with its members’ fiduciary obligations under the Dissolution Act.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency City of Foster City that the Cooperation Agreement (Housing Endowment and Regional Trust of San Mateo County Dues) with the City of Foster City, attached hereto and incorporated herein, is approved and that the City Manager is authorized to execute the agreement with the City on behalf of the Successor Agency.

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 9<sup>th</sup> day of May, 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

## **COOPERATION AGREEMENT**

### **(Housing Endowment and Regional Trust of San Mateo County Dues)**

This Cooperation Agreement (“Agreement”) is entered into as of the 9<sup>th</sup> day of May, 2012, by and between the City of Foster City, a California municipal corporation (“City”), and the City of Foster City as Successor Agency to the former City of Foster City Community Development Agency (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. Health and Safety Code Section 34179(i) states that oversight boards “have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188.”

D. The Housing Endowment and Regional Trust of San Mateo County (“HEART”) is a joint powers authority that provides services to member jurisdictions relative to construction, rehabilitation, and acquisition of affordable housing units, and the placement of low- and moderate- income seniors and other residents in affordable units.

E. The City is a member of HEART and a signatory to the joint powers agreement establishing HEART (“Joint Powers Agreement”), and for each of the past five fiscal years, pursuant to the City and Redevelopment Agency’s annual budgetary approval process, the Redevelopment Agency has paid the City’s annual HEART membership dues in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) (“HEART Dues Payment”).

F. The Joint Powers Agreement requires a member agency to provide notice of its intent to terminate its membership at least ninety (90) days prior to the start of the new fiscal year.

G. Neither the City nor the Redevelopment Agency having given notice of an intent to terminate the City’s membership in HEART, the City will owe the HEART Dues Payment for the 2012-2013 fiscal year beginning July 1.

H. Pursuant to Health and Safety Code Section 34178(a) a successor agency may enter into agreements with a city that formed the redevelopment agency upon obtaining approval of its oversight board.

I. The City and the Successor Agency desire to enter into this Agreement in order for the Successor Agency to make the 2012-2013 HEART Dues Payment consistent with the established practice of the former Redevelopment Agency, and the Oversight Board has approved execution of this Agreement as being fair and equitable and consistent with its members’ fiduciary obligations under the Dissolution Act.

## **AGREEMENT**

Section 1.     HEART Dues Payment. The Successor Agency shall make the HEART Dues Payment on the City's behalf for the 2012-2013 fiscal year at an amount not to exceed Twelve Thousand Five Hundred Dollars (\$12,500).

Section 2.     Enforceable Obligation. The obligations of the Successor Agency under this Agreement shall constitute an indebtedness and enforceable obligation of the Successor Agency under the Dissolution Act to be included in the Recognized Obligation Payment Schedules to be prepared by the Successor Agency and approved by the Oversight Board.

Section 3.     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 -

CITY OF FOSTER CITY, as successor  
agency to the City of Foster City  
Community Development Agency

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: May 9, 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 Cooperation Agreement with the City of Foster City for Administrative Support Services and Facilities

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### **RECOMMENDATION**

It is recommended that the Oversight Board approve the attached resolution authorizing the City Manager to execute an agreement between the Successor Agency and City of Foster City for support services to be provided by the City to the Successor Agency.

### **EXECUTIVE SUMMARY**

The City of Foster City, acting as Successor Agency to the former Foster City Community Development Agency, provides support services to the Successor Agency and its Oversight Board. The nature and cost of such services are spelled forth in an Administrative Budget that is presented for approval to the Oversight Board on an annual basis. The obligation is listed as an "Administrative Cost Allowance" and is included in the Recognized Obligation Payment Schedule (ROPS) on a semi-annual basis. The City and Successor Agency staff believe it to be a good practice to spell forth the terms of said services in the form of a Cooperation Agreement between the two parties. The attached agreement was drafted by the Successor Agency's legal counsel, Jerry Ramiza of Burke Williams & Sorensen, and was transmitted for review by the Oversight Board's legal counsel, Craig Labadie.

### **BACKGROUND and ANALYSIS**

The City of Foster City elected to serve as the Successor Agency to its former Agency dissolved by the enactment of ABx1 26 and the subsequent ruling of the California Supreme Court. In the course of serving as Successor Agency, the City provides staff support and various services that are provided by third party contractors under contract with the City. These costs are prepared on an annual basis as an Administrative Budget under California Health & Safety Code §34177(j),

and are presented to the Oversight Board for their approval on an annual basis. The costs relative to each 6-month period are presented on a ROPS covering that same 6-month period.

The provisions of ABx1 26 spell forth the nature of the relationship between the City and the Successor Agency, and the procedures for the adoption of an Administrative Budget that manifests itself in the form of an administrative cost allowance on the semi-annual ROPS. Nevertheless, in light of the Oversight Board's discussions at its April 10, 18 and 26 meetings in regards to the administrative support services that would be provided between the City and the Successor Agency, the Successor Agency staff believe it to be a good practice to develop a Cooperation Agreement between the two parties, approved by Oversight Board and the City Council, to codify the terms of the services to be provided to the Successor Agency.

The agreement was prepared based upon the premise that the City will continue to provide support services to the Successor Agency unless and until which time that either the obligations of the former Agency are completed or the City elects as provided under the legislation to no longer serve as Successor Agency. As this agreement is intended to be a long-term agreement, the draft agreement does not specify any dollar amounts or specific City positions that provide the services to the Successor Agency as those amounts and positions may change over time depending upon the nature and extent of the activities associated with the wind-down of the Agency. Rather, the preparation of an annual Administrative Budget would spell forth the details of the costs associated with the services provided that the Oversight Board would have the authority and responsibility to approve as a separate action each year.

### **Alternatives**

1. Adopt the attached resolution that approves the Cooperation Agreement between the City and the Successor Agency (**recommended**)
2. Do not adopt the resolution and look to the provisions as specified in ABx1 26 to govern the terms of the City's provision of administrative support services to the Successor Agency
3. Amend the agreement to have a term beginning July 1, 2012 and ending June 30, 2013 and specify dollar amounts, positions and support services costs in the agreement reflective of the Administrative Budget for FY 2012-2013 that is presented for Oversight Board approval at this meeting under a separate item.

### **Attachments**

- Resolution
- Cooperation Agreement (Support Services and Facilities) with the City of Foster City

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

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY CITY OF FOSTER CITY APPROVING A COOPERATION AGREEMENT WITH THE CITY OF FOSTER CITY FOR SUPPORT SERVICES AND FACILITIES

SUCCESSOR AGENCY CITY OF FOSTER CITY

WHEREAS, 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; and,

WHEREAS, 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”); and,

WHEREAS, Health and Safety Code Section 34179(i) states that oversight boards “have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188”; and,

WHEREAS, Section 34177(j) of the Health and Safety Code also requires the Successor Agency to prepare an administrative budget to be approved by the Oversight Board which, among other things, may include arrangements for administrative and operations services provided by the City; and,

WHEREAS, pursuant to Health and Safety Code Section 34178(a) a successor agency may enter into agreements with a city that formed the redevelopment agency upon obtaining approval of its oversight board; and,

WHEREAS, the City and the Successor Agency desire to enter into this Agreement in order for the City to provide for the staff services and facilities which the City will render for and make available to the Successor Agency in furtherance of the duties and responsibilities of the Successor Agency under the Dissolution Act, and

to provide that the Successor Agency will reimburse the City for its costs of providing staff services and facilities incurred for and on behalf of the Successor Agency, and the Oversight Board has approved execution of this Agreement as being fair and equitable and consistent with its members' fiduciary obligations under the Dissolution Act.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency City of Foster City that the Cooperation Agreement (Support Services and Facilities) with the City of Foster City, attached hereto and incorporated herein, is approved and that the City Manager is authorized to execute the agreement with the City on behalf of the Successor Agency.

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 9<sup>th</sup> day of May, 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

## **COOPERATION AGREEMENT**

### **(Staffing Support and Facilities)**

This Cooperation Agreement (“Agreement”) is entered into as of the 9<sup>th</sup> day of May, 2012, by and between the City of Foster City, a California municipal corporation (“City”), and the City of Foster City as Successor Agency to the former City of Foster City Community Development Agency (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. Health and Safety Code Section 34179(i) states that oversight boards “have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188.”

D. Section 34177(j) of the Health and Safety Code also requires the Successor Agency to prepare an administrative budget to be approved by the Oversight Board which, among other things, may include arrangements for administrative and operations services provided by the City.

E. Pursuant to Health and Safety Code Section 34178(a) a successor agency may enter into agreements with a city that formed the redevelopment agency upon obtaining approval of its oversight board.

E. The City and the Successor Agency desire to enter into this Agreement in order for the City to provide for the staff services and facilities which the City will render for and make available to the Successor Agency in furtherance of the duties and responsibilities of the Successor Agency under the Dissolution Act, and to provide that the Successor Agency will reimburse the City for its costs of providing staff services and facilities incurred for and on behalf of the Successor Agency, and the Oversight Board has approved execution of this Agreement as being fair and equitable and consistent with its members' fiduciary obligations under the Dissolution Act.

## **AGREEMENT**

Section 1. Form of City Assistance. The City, its officers, employees and/or special consultants shall, at the request of the Successor Agency, perform services for the Successor Agency in carrying out its duties and responsibilities under the Dissolution Act. Those City employees who are also performing services related to Successor Agency work shall perform services for the Successor Agency in a dual capacity.

The City shall also provide assistance to the Successor Agency in the form of (a) access to supplies and/or facilities of the departments and offices of the City; and (b) expenditure of City funds by the City on behalf of the Successor Agency pursuant to this Agreement.

Section 2. Enforceable Obligation. The obligations of the Successor Agency under this Agreement, to reimburse the City for services rendered or expenditures made on the Successor Agency's behalf shall constitute an indebtedness and enforceable obligation of the Successor Agency under the Dissolution Act to be included in the Recognized Obligation Payment Schedules to be prepared by the Successor Agency and approved by the Oversight Board. Upon receipt of the billing therefore from the City, the debt will be due and payable by the Successor Agency in accordance with the terms of this Agreement.

Section 3. Repayment of Debt. The Successor Agency agrees to repay the City for all assistance rendered hereunder. On the basis of procedures established by the City Manager, the City shall compute the costs of the services and facilities provided hereunder, the amount of funds expended on the Successor Agency's behalf for services and facilities provided. The City shall regularly, but at least semi-annually, prepare a statement of such costs evidencing the Successor Agency's liability. Such statements shall include a proration of the City's administrative and salary expenses attributable to the provision of services by City officials, employees and departments on behalf of the Successor Agency.

The City shall maintain adequate accounting records to substantiate the costs charged to the Successor Agency under this Agreement.

Section 4. Terms of Repayment. The Successor Agency agrees to pay any amounts owed under this Agreement to the City together with accrued interest calculated at a variable rate based upon the annual average rate of return earned on the City's investment portfolio as determined by the City's Treasurer, compounded annually. Such interest shall be computed from the date that is ninety (90) days from the date the cost was incurred by the City until paid. The debt is due and payable when incurred, to the extent that 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 for the Successor Agency City of Foster City.

Section 5. 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 -

CITY OF FOSTER CITY, as successor  
agency to the City of Foster City  
Community Development Agency

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

Attest:

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

APPROVED AS TO FORM

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