

RESOLUTION OB 2013-001

**RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY
TO THE TOWN OF LOS GATOS REDEVELOPMENT AGENCY TAKING SPECIFIED
ACTIONS WITH RESPECT TO THE DUE DILIGENCE REVIEW REPORT FOR THE
NON-HOUSING ASSETS OF THE FORMER TOWN OF LOS GATOS
REDEVELOPMENT AGENCY AND AUTHORIZING THE TRANSMITTALS
PURSUANT TO HEALTH & SAFETY CODE SECTIONS 34179.5 AND 34179.6**

RECITALS

WHEREAS, the California state legislature enacted ABx1 26 (as amended by AB 1484, the "Dissolution Act"), pursuant to which the former Town of Los Gatos Redevelopment Agency (the "RDA") was dissolved and the Town of Los Gatos (the "Town") elected to serve as the successor agency for the former Agency ("Successor Agency"); and

WHEREAS, Health and Safety Code Section 34177(d) requires the Successor Agency, among other statutory duties, to employ a licensed accountant approved by the Santa Clara County Auditor-Controller (the "County Auditor-Controller") with experience and expertise in local government accounting to conduct a due-diligence review to determine the unobligated balances available for transfer to taxing entities; and

WHEREAS, the Successor Agency agreed to allow the Santa Clara County Auditor-Controller to retain Macias Gini & O'Connell, LLP (MGO), a licensed accountant with experience and expertise in local government, to conduct a due-diligence review; and

WHEREAS, the review of all non-Housing Funds (the "Non-Housing Funds") was due by December 15, 2012; and

WHEREAS, MGO and the County Auditor-Controller completed its due-diligence review of the Non-Housing Funds and provided a report to the Successor Agency on December 20, 2012 (the "Non-Housing Fund Due Diligence Review Report"); and

WHEREAS, the Successor Agency submitted the Non-Housing Fund Due Diligence Review Report to the Department of Finance, State Controller, County Administrative Officer, County Auditor-Controller, and Oversight Board as required by Health and Safety Code Section 34177.6; and

WHEREAS, the Oversight Board convened a public comment session regarding the Non-Housing Fund Due Diligence Review Report on January 3, 2013; and

WHEREAS, the Oversight Board has reviewed the Successor Agency staff report, dated January 10, 2013, accompanying the Non-Housing Fund Due Diligence Review Report (the "Successor Agency Report"), a copy of which is on file with the Secretary of the Oversight Board and which is incorporated in this Resolution by this reference; and

WHEREAS, the Successor Agency Report notes two concerns with the Non-Housing Fund Due Diligence Review Report related generally to the following:

1. The Non-Housing Fund Due Diligence Review Report found that \$6,356,550 of funds transferred from the RDA to the Town pursuant to a public improvement grant agreement approved prior to the adoption of the Dissolution Act should instead be deemed funds available for distribution by the Successor Agency to the taxing entities. The Successor Agency contends that a \$3,011,963 portion of that total was transferred for actual expenditures to third parties incurred by the Town for construction of the public library under a duly authorized agreement, and so, under the applicable provisions of the Dissolution Act, should not be deemed funds available for distribution to the taxing entities (the "Reduced Available Transferred Funds Issue").

2. In order to ensure adequate funds are available for full repayment of the 2010 Certificates of Participation (the "2010 COPS") as required by the debt issuance, the Successor Agency contends that it is necessary to retain an additional portion of the Non-Housing Funds balance to establish a contingency fund to assure full payment of the 2010 COPS (the "2010 COPS Contingency Fund Issue"), and that failure to address the Contingency Fund Issue through such retention or another satisfactory method could foreseeably result in an inability and failure of the Successor Agency to fully pay the 2010 COPS obligation, which has been approved on three successive Recognized Obligation Payment Schedules ("ROPS") by the Oversight Board and the Department of Finance as an enforceable obligation.

WHEREAS, the Oversight Board has reviewed and approved a determination of the amount of cash and cash equivalents that are available for disbursement to the taxing entities from the Non-Housing Fund in accordance with Health and Safety Code Section 34179.5;

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the above Recitals are adopted as part of this Resolution.

BE IT FURTHER RESOLVED that the Oversight Board hereby approves the Non-Housing Fund Due Diligence Review Report dated December 20, 2013, in the form on file with the Successor Agency and posted on the County Auditor-Controller's website; and

BE IT BE IT FURTHER RESOLVED that, in accordance with Health and Safety Code Section 34179.5(c)(5)(B), the Oversight Board hereby authorizes the Successor Agency to retain assets or funds legally restricted as to their purpose, in the amount of \$2,463,939, from the funding sources and for the purposes identified in Attachment F of the Non-Housing Fund Due Diligence Review.

BE IT FURTHER RESOLVED that, in accordance with Health and Safety Code Section 34179.5(c)(5)(C), the Oversight Board hereby authorizes the Successor Agency to retain assets or funds that are not cash or cash equivalent, in the amount of \$2,237,239, from the funding sources and for the purposes identified in Attachment G of the Non-Housing Fund Due Diligence Review.

BE IT FURTHER RESOLVED that, in accordance with Health and Safety Code Section 34179.5(c)(5)(E), the Oversight Board hereby authorizes the Successor Agency to retain assets or funds, including any current balances, needed to satisfy obligations placed on the FY 2012-13 Recognized Obligation Payment Schedules, in the amount of \$1,571,332, from the funding sources and for the purposes identified in Attachment H of the Non-Housing Fund Due Diligence Review.

BE IT FURTHER RESOLVED that, while the Oversight Board does not authorize the retention by the Successor Agency of any Non-Housing Funds balance as being legally restricted for funding of future years' enforceable obligations in accordance with Health and Safety Code Section 34179.5(c)(5)(D), the Oversight Board does acknowledge and direct as follows in connection with the 2010 COPs Contingency Fund Issue:

1. The Successor Agency has a statutory obligation pursuant to Health and Safety Code Section 34177(c) to perform obligations related to enforceable obligations, including making all payments when due with respect to the 2010 COPs;

2. Health and Safety Code Section 34175(a) expressly states that it is the intent of the Dissolution Act that pledges of revenues with respect to enforceable obligations of the RDA, such as the pledge of revenues to make payments when due with respect to the 2010 COPs, are to be honored; and

3. In order to meet the above statutory obligations and intent, it is imperative that the Successor Agency and the County Auditor-Controller/County Finance Agency work cooperatively to satisfactorily address the 2010 COPs Contingency Fund Issue;

4. As fully described in the Successor Agency Report and in the County Finance Agency's transmittal letter for the Non-Housing Fund Due Diligence Review Report, the County Auditor-Controller/County Finance Agency has committed to work closely with the Successor Agency to establish an appropriate amortization schedule for payments on future ROP's, beginning with ROPS IV, to satisfactorily address the 2010 COPs Contingency Fund Issue; and

5. The Oversight Board directs the Successor Agency to work cooperatively with the County Auditor-Controller/County Finance Agency to satisfactorily address the 2010 COPs Contingency Fund Issue.

BE IT FURTHER RESOLVED that the Oversight Board hereby determines that the Successor Agency made the required July 12, 2012 "true-up" payment to the County Auditor-Controller, in accordance with Health and Safety Code Section 34183.5, in the amount of \$295,101, and that such amount has been deducted from the funds and accounts of the Successor Agency that are available for distribution to the taxing entities as determined according to the method provided in Health and Safety Code Section 34179.5.

BE IT FURTHER RESOLVED that the Oversight Board determines the unobligated Non-Housing Funds balance available for distribution to the taxing entities is \$6,726,146 plus accrued interest and subject to the Department of Finance's approval, shall be transmitted to the County Auditor-Controller for allocation to affected taxing entities pursuant to the terms of the Dissolution Act.

BE IT FURTHER RESOLVED that the Oversight Board hereby authorizes and directs the Successor Agency staff to take all necessary actions under the Dissolution Act to file, post, mail or otherwise deliver electronically all notices and transmittals necessary or convenient in connection with the approval of the Non-Housing Fund Due Diligence Review and take any other actions necessary to ensure the validity of the Non-Housing Fund Due Diligence Review. In addition, the Oversight Board authorizes the Successor Agency staff to make any payment required under Health & Safety Code Section 34179.6 and pursuant to the findings of this Resolution.

BE IT FURTHER RESOLVED that the Oversight Board authorizes the Successor Agency to submit the Successor Agency Report to the Department of Finance in connection with the Non-Housing Fund Due Diligence Review Report in order to apprise the Department of and preserve the Successor Agency's meet and confer rights with respect to the Reduced Transferred Funds Issue and the 2010 COPs Contingency Fund Issue, and acknowledges that the Successor Agency may submit further information for the Department of Finance to consider in accordance with Health and Safety Code Section 34179.6(d) and may request a meet and confer process with the Department of Finance pursuant to Health and Safety Code Section 34179.6(e) with respect to the Reduced Funds Issue and the 2010 COPs Contingency Fund Issue.

PASSED AND ADOPTED at a regular meeting of the Oversight Board for the Successor Agency of the Redevelopment Agency of the Town of Los Gatos held on the 10th day of January, 2013 by the following vote:

AYES: Jane Decker, Donna Mecimer (alternate), Ed Maduli, and Mike Rock

NAYS: Pamela Jacobs and Chair Steve Rice

ABSENT:

ABSTAIN: Tom Woodruff

SIGNED:



CHAIR OF THE OVERSIGHT
BOARD FOR REDEVELOPMENT
AGENCY OF THE TOWN OF LOS
GATOS

ATTEST:



CLERK ADMINISTRATOR/SECRETARY OF THE
OVERSIGHT BOARD AND SUCCESSOR AGENCY
OF THE REDEVELOPMENT AGENCY OF THE
TOWN OF LOS GATOS