

## RESOLUTION NO. OB-010

### **A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO MORGAN HILL REDEVELOPMENT AGENCY DIRECTING THE SUCCESSOR AGENCY TO OBTAIN SERVICES OF OUTSIDE COUNSEL FOR THE PURPOSES OF PROVIDING LITIGATION ADVICE REGARDING THE ECONOMIC DEVELOPMENT CORPORATION ASSETS**

**WHEREAS**, Part 1.85 of the Health and Safety Code ("Code") (commencing with §34170) ("Dissolution Act") dissolved the former Morgan Hill Redevelopment Agency (the "Former Agency") and designated the City of Morgan Hill ("City") as the Successor Agency for the Former Agency ("Successor Agency").

**WHEREAS**, under the Dissolution Act, the Successor Agency must, among other statutory duties, dispose of assets and properties of the Former Agency "to be done expeditiously and in a manner aimed at maximizing value."

**WHEREAS**, Code §34179(n) provides that "an oversight board may direct a successor agency to provide additional legal or financial advice than what was given by agency staff."

**WHEREAS**, the Oversight Board has determined to direct the Successor Agency to provide additional legal advice by retaining outside counsel ("Conflicts Counsel") regarding possible litigation in the matter of *Morgan Hill Economic Development Corporation v. Office of State Controller*, in which matter the City Attorney of the City of Morgan Hill announced during the Oversight Board meeting on October 8, 2012, that he has declined to act as legal counsel to the Successor Agency due to a conflict of interest between the City and the Successor Agency.

**WHEREAS**, the Oversight Board intends to direct the use of the selected Conflicts Counsel for other matters in which the City Attorney, serving as legal counsel to the Successor Agency, has a conflict in advising the Successor Agency.

**WHEREAS**, the City Manager, acting as chief administrator of the Successor Agency has the delegated authority under Morgan Hill Municipal Code §3.04.140 to enter into professional services contracts up to \$25,000 without City Council or Successor Agency governing board action.

**WHEREAS**, Code §34177.3 provides that the Successor agencies shall lack the authority to create new enforceable obligations, but "may create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance."

**WHEREAS**, Code §34173(h) provides that the City "may loan or grant funds to a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion," and the repayment of the loan shall be deemed an enforceable obligation.

**WHEREAS**, Code §34171(b) provides that "any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition" shall not be paid from the administrative cost allowance.

**WHEREAS**, the Successor Agency has reviewed proposals from six (6) law firms or offices proposing to serve as Conflicts Counsel to the Successor Agency and has advised the Successor Agency that Miller and Owen is the most appropriate to serve as Conflicts Counsel.

**THEREFORE, BE IT RESOLVED BY** the Oversight Board that the above recitals are adopted as part of the resolution and are true; and


**BE IT FURTHER RESOLVED** that the Oversight Board hereby directs the Successor Agency to enter into a professional services contract to an amount not to exceed \$24,999 for a term of one year with Miller and Owen to serve as Conflicts Counsel in the matter of *Morgan Hill Economic Development Corporation v. Office of State Controller* and in other matters that the Successor Agency or the Oversight Board determines where the City Attorney has a conflict in advising the Successor Agency or the Oversight Board.

**BE IT FURTHER RESOLVED** that the Oversight Board approves the entering into of a loan agreement between the Successor Agency and City of Morgan Hill whereby, subject to the approval of the City Council, the City shall loan the cost of the Conflicts Counsel to the Successor Agency and the Successor Agency shall repay or reimburse the City as an enforceable obligation for the payment amount, or alternatively, the entering into of an enforceable obligation under Code §34177.3(b).

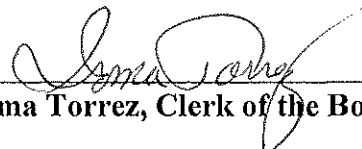
**BE IT FURTHER RESOLVED** that the Oversight Board has determined that the cost of Conflicts Counsel in advising the Successor Agency and the Oversight Board in the matter of *Morgan Hill Economic Development Corporation v. Office of State Controller* is "litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition" that shall not be paid from the administrative cost allowance of the Successor Agency.

**PASSED AND ADOPTED** by the Oversight Board of Morgan Hill at a Special Meeting held on the 15th day of October 2012, by the following vote:

<b>AYES:</b>	<b>Board members:</b>	<b>Don Gage, Steve Kinsella, Pete Kutras, Steve Tate, Angela Rivera, George Putris, Wes Smith</b>
<b>NOES:</b>	<b>Board members:</b>	<b>None</b>
<b>ABSENT:</b>	<b>Board members:</b>	<b>None</b>

  
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**Chair - Oversight Board of the Successor Agency to the Morgan Hill Redevelopment Agency**

**Attest:**

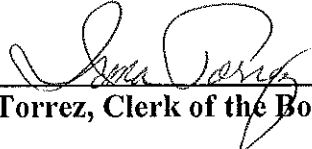
  
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**Irma Torrez, Clerk of the Board**

∞ CERTIFICATION ∞

I, Irma Torrez, City of the Oversight Board of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. OB-010, adopted by the Oversight Board at a Special meeting held on October 15, 2012.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 11/20/12

  
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Irma Torrez, Clerk of the Board