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OAKLAND

2012 AUG 30 AM 11:36

# AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Osborn K. Solitei

SUBJECT: Oakland Redevelopment Successor  
Agency Audit and Due Diligence Reviews

DATE: August 29, 2012

City Administrator  
Approval

Date

8/29/12

COUNCIL DISTRICT: City-Wide

## RECOMMENDATION

Staff requests that City Council adopt the proposed Oakland Redevelopment Successor Agency resolutions authorizing an amendment to increase the existing contract with Macias, Gini & O'Connell by an amount not-to-exceed \$100,000 to perform a five (5) month year-end audit services for the Oakland Redevelopment Successor Agency (ORSA) and Due Diligence Reviews under the provisions of California Health & Safety Code Section 34179.5, and waiving competitive requirement for such services.

## EXECUTIVE SUMMARY

The California Department of Finance (DOF) issued a letter dated July 11, 2012 to redevelopment successor agencies regarding the implementation of ABx1 26 and its amending legislation AB 1484 which was enacted on June 27, 2012.

AB 1484, the trailer bill to the redevelopment dissolution legislation, imposes a requirement on successor agencies to retain a licensed accountant with experience and expertise in local government accounting to perform a due diligence reviews of former redevelopment agency assets; a review of housing fund balances and a review of non-housing funds. The purpose of these reviews is to determine the amount of unobligated cash balances that could be available for transfer to the local taxing entities currently subject to property tax allocations. The completion of the reviews and the transfer of funds is a precondition to receipt of a finding of completion from the DOF, which will allow the Successor Agency to dispose of properties for redevelopment and to use unencumbered bond proceeds for redevelopment purposes. The review for housing fund balances must be completed by October 1 for submission to the Oversight Board. For non-housing funds, the review must be completed by December 15.

Item: \_\_\_\_\_

Finance & Management Committee  
September 11, 2012

## OUTCOME

The Oakland Redevelopment Successor Agency will be in compliance with the audit and due diligence reviews requirement of the Health & Safety Code Section 34179.5, added by AB 1484.

## BACKGROUND/LEGISLATIVE HISTORY

Section 809 of the City of Oakland (the "City") Charter states that the City Council shall engage an independent certified public accountant to examine and report on the annual financial statements of the City and the Oakland Redevelopment Agency.

On April 20, 2010, the City Council approved a five-year contract extension for the period from Fiscal Year 2009-10 to Fiscal Year 2013-14 with Macias Gini & O'Connell, LLP ("MGO") to provide audit services to the City and the Oakland Redevelopment Agency (the "Agency").

On December 29, 2011, the California Supreme Court announced its decision to uphold ABx1 26 (the "Dissolution Act") dissolving all redevelopment agencies throughout California.

On February 1, 2012, the Oakland Redevelopment Agency was dissolved and the Successor Redevelopment Agency (SRA) was set-up to account for all Oakland Redevelopment Agency (ORA) assets and liabilities.

On July 17, 2012 The Oakland City Council adopted Resolution No. 84017 C.M.S. establishing the Oakland Redevelopment Successor Agency as the Successor Agency to the Oakland Redevelopment Agency.

## PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

## COORDINATION

This report was routed to the City Attorney and Budget Office for review.

Item: \_\_\_\_\_  
Finance & Management Committee  
September 11, 2012

**COST SUMMARY/IMPLICATIONS**

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Audh Services (February-June 30, 2012)	\$25,000
Due Diligence Reviews	<u>\$75,000</u>
Total	\$100,000

2. SOURCE OF FUNDING:

Five (5) month Audit Services - Fund 1610 (Successor Redevelopment Agency Reimbursement Fund)

Due Diligence Reviews – Recognized Obligation Payment Schedule (ROPS), Administrative Allowance.

3. FISCAL IMPACT: There is no impact on the General Purpose Fund (GPF).

**SUSTAINABLE OPPORTUNITIES**

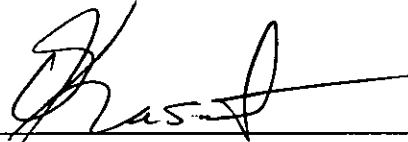
***Economic:*** No direct economic opportunities have been identified

***Environmental:*** No environment opportunities have been identified

***Social Equity:*** No social equity opportunities have been identified

For questions regarding this report, please contact Osborn K. Solitei, Controller at 510-238-3809.

Respectfully submitted,



Osborn K. Solitei, Controller

Attachment (1)

- ***DOF Letter to Redevelopment Successor Agency Representatives***

Item: \_\_\_\_\_  
Finance & Management Committee  
September 11, 2012



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 ABx I 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 ABx I 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 ABx I 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 1464 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.

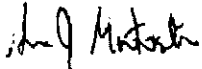
- The Successor Agency itself shall be subject to civil penalties equal to: (a) 10 percent of the residual property tax owed the Affected Taxing Entities and (b) a monthly penalty of 1.5 percent of the amount owed the Affected Taxing Entities while the payments are late.

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

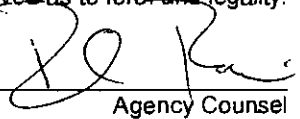
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Approved as to form and legality:

By:   
Agency Counsel

## OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. \_\_\_\_\_

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**A SUCCESSOR AGENCY RESOLUTION AMENDING REDEVELOPMENT AGENCY RESOLUTION NO. 2010-0048 C.M.S., WHICH AUTHORIZED A CONTRACT WITH MACIAS GINI, & O'CONNELL, LLP, FOR AUDIT SERVICES IN AN AMOUNT NOT TO EXCEED \$464,467, TO INCREASE THE CONTRACT BY AN AMOUNT NOT TO EXCEED \$100,000 TO PROVIDE DUE DILIGENCE ASSET REVIEW SERVICES AS REQUIRED BY HEALTH & SAFETY CODE SECTION 34179.5, AND OTHER AUDIT SERVICES, AND WAIVING COMPETITIVE REQUIREMENTS FOR SUCH SERVICES**

**WHEREAS**, the Redevelopment Agency of the City of Oakland passed Resolution No. 2010-0048 C.M.S. on April 20, 2010, which authorized the Agency Administrator to execute a contract with Macias Gini & O'Connell, LLP to provide audit services for the Redevelopment Agency in an amount not to exceed \$464,467; and

**WHEREAS**, the City Council passed Resolution No. 84017 C.M.S. on July 17, 2012, establishing the Oakland Redevelopment Successor Agency as the successor agency to the Redevelopment Agency of the City of Oakland; and

**WHEREAS**, California Health and Safety Code Section 34179.5 requires that a due diligence review of former Redevelopment Agency assets be completed by a licensed accountant; and

**WHEREAS**, the Successor Agency, which follows the same contracting process as the City of Oakland, wishes to amend the contract with Macias Gini & O'Connell, LLP, to provide such services; and

**WHEREAS**, Oakland Municipal Code Section 2.04.051.B authorizes the Agency Board to waive advertising and the request for proposals process upon a finding that it is in the Successor Agency's best interest to do so; and



**WHEREAS**, staff recommends that it is in the Successor Agency's best interests to waive advertising and the request for proposals process for the due diligence review services to be added to the contract because at the time the Redevelopment Agency entered its contract with Macias Gini & O'Connell, LLP the requirement for these additional services was unknown, the current contract involves closely related services; and the expansion of the scope of the contract is reasonable and economical under the circumstances; now, therefore, be it

**RESOLVED**: That pursuant to Oakland Municipal Code Section 2.04.051.B, the Agency Board hereby finds and determines that it is in the best interests of the Successor Agency to waive the request for proposal or qualifications process for the hiring of an independent certified public accountant to perform the audit services and the due diligence asset review as mandated by Health and Safety Code Section 34179.5, for the reasons set forth above; and be it

**FURTHER RESOLVED**: That the Agency Board hereby authorizes the Agency Administrator to negotiate and enter into an amendment to the contract with Macias Gini & O'Connell, LLP to provide due diligence asset review services and other audit services, and to increase the contract amount by an amount not-to-exceed one hundred thousand dollars (\$100,000) to pay for such services; and be it

**FURTHER RESOLVED**: That Agency Counsel will review and approve the contract amendment as to form and legality, and a copy will be place on file with the Secretary of the Agency; and be it

**FURTHER RESOLVED**: That the Agency Administrator or her designee is hereby authorized to take any other action with respect to such contract amendment consistent with this Resolution and its basic purposes.

IN SUCCESSOR AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, AND  
CHAIRPERSON REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
Secretary of the Oakland Redevelopment  
Successor Agency