



CITY OF ESCONDIDO

201 North Broadway
Escondido, CA 92025

Oversight Board to the Successor Agency of the Escondido Redevelopment Agency

**Tuesday
April 9, 2013**

10:00 AM

Mitchell Room

- 1. [Approval of Minutes:](#) February 21, 2013**
- 2. [Retention of Outside Legal Counsel](#)**
- 3. Oral Communications**

“Under State law, all items under Oral Communications can have no action and will be referred to the staff for administrative action or scheduled on a subsequent agenda.”

This is the opportunity for members of the public to address the subcommittee on any item of business within the jurisdiction of the subcommittee.

- 4. Adjournment**



OB Agenda Item No.: 1
Date: April 9, 2013

APPROVAL

OF

MINUTES

CITY OF ESCONDIDO

MINUTES OF THE REGULAR MEETING OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE ESCONDIDO REDEVELOPMENT AGENCY

February 21, 2013

The regular meeting of the Oversight Board of the Successor Agency of the Escondido Redevelopment Agency was called to order at 10:00 a.m., by Chairman Phillips in Training Room 1 at City Hall, 201 North Broadway, Escondido, California.

Board Members Present: Chairman Phillips, Vice-chairman Rojas, Boardmember Yerxa, Boardmember Baker, Boardmember Baranowski, Boardmember Simonson, and Boardmember McNamara.

Commissioners absent: None.

Staff present: Jeffrey Epp, City Attorney; Joan Ryan, Finance Manager; Jodi Coco-Cleveland, City Accountant; Debra Lundy, Real Property Manager; and Ty Paulson, Minutes Clerk.

MINUTES

Moved by Boardmember McNamara, seconded by Boardmember Baker, to approve the minutes of the January 8, 2013, meeting. Motion carried unanimously.

2. **Approval of Recognized Obligation Payment Schedule (ROPS) for July 2013 thru December 2013 (Resolution No. OB 2013-03)**

Ms. Ryan referenced the staff report and noted that staff recommended the Board approve the Recognized Obligation Payment Schedule (ROPS) for July 2013 thru December 2013, (Resolution No. OB 2013-03).

Discussion ensued regarding a clarification of the dispute from the County for Items 11-23 in the staff report as well as a clarification of recently added items. Additional discussions ensued regarding a clarification of the litigation with Item 7 in the staff report.

Chairman Phillips noted that the Department of Finance agreed that the outstanding payment needed to be paid, noting that the timing was being worked out.

ACTION:

Moved by Boardmember Baranowski, seconded by Boardmember McNamara, to approve staff's recommendation. Motion carried unanimously.

3. Approval of Loan Agreement between the City of Escondido and Redevelopment Successor Agency (Resolution No. OB 2013-04)

Ms. Ryan referenced the staff report and noted that staff recommended that the Board approve the loan agreement between the City of Escondido and the Redevelopment Successor Agency (Resolution No. OB 2013-04).

Chairman Phillips noted that the City Council had already approved this loan agreement, noting it was before the Board to formalize the action.

Boardmember Baranowski and Boardmember Rojas discussed the method and timing regarding for the City being paid back.

Boardmember Simonson asked if the Department of Finance had accepted loans created in the last two years by successor agencies or the RDA to go on ROPS. Boardmember Rojas noted that the advances were made within the last two years window. He also stated that the drawdowns were not approved yet.

ACTION:

Moved by Boardmember McNamara, seconded by Boardmember Baker, to approve staff's recommendation. Motion carried unanimously.

4. Repayment Schedule of the Educational Revenue Augmentation Fund Loans to the Housing Successor Agency

Ms. Ryan provided the staff report and requested the Board approve the repayment schedule of the Educational Revenue Augmentation Fund Loans to the Housing Successor Agency (Resolution No. OB 2013-05).

Boardmember McNamara asked if any interest was owed on the repayments. Ms. Ryan replied in the negative.

ACTION:

Moved by Boardmember Rojas, seconded by Boardmember McNamara, to approve staff's recommendation. Motion carried unanimously.

5. Update regarding the appeals with the State

Mr. Epp provided the update and noted that the meet and confer had occurred regarding the housing assets transfer. The three items contested included the following: 1) the purchase of one property; 2) service related contracts for mobile home spaces the City owned; and 3) a series of first time homebuyer programs. He noted that the City won Item 1. Item 2 the State felt was not appropriate housing assets. He stated that regarding Item 3, the State felt the housing successor agency should not have entered into those loans after a certain date, noting the City elected not to litigate.

Mr. Epp noted that the City was being sued as a successor agency by Palomar College. He stated that the lawsuit basically challenged the way the City administered the tax sharing agreement during the years of the redevelopment agency.

Boardmember Baker asked if anything had occurred regarding San Marcos feeling some funds were due to them. Mr. Epp noted that they had not heard anything further from San Marcos, noting this situation was similar to Palomar.

ORAL COMMUNICATIONS:

Michael Taylor, Escondido Union School District, noted that he was replacing Ms. Manusov and asked if any discussion had occurred regarding a conflict of interest with legal representation. Mr. Epp noted that alternate counsel had been lined up for the Oversight Board.

Mr. Taylor asked if the cash flow projections were available for the current year and following years. Boardmember Rojas replied in the affirmative, noting that the projection was that there would be enough funds to take care of the obligations.

Boardmember Rojas noted that one of the concerns for hiring outside counsel was the high cost factors.

ADJOURNMENT:

Chairman Phillips adjourned the meeting at 10:21 am.

Clay Phillips, Chairman

Ty Paulson, Minutes Clerk



**OVERSIGHT BOARD TO THE
SUCCESSOR AGENCY OF THE
ESCONDIDO REDEVELOPMENT AGENCY**

Agenda Item No.: 2
Date: April 9, 2013

TO: Members of the Oversight Board
FROM: Jeffrey R. Epp, City Attorney
SUBJECT: Retention of Outside Legal Counsel for Pending Litigation

RECOMMENDATION:

It is requested that the Oversight Board approve the retention of outside legal counsel, Morgan Foley, with the law firm McDougal, Love, Boehmer & Foley for the limited purpose of representing its interests in the pending litigation entitled *City of Escondido, et al. v. Ana Matasantos, et al.*, Sacramento County Superior Court Case No. 34-2013-00140530.

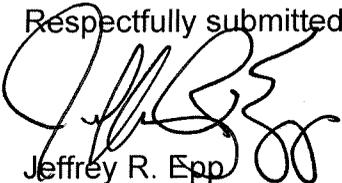
BACKGROUND:

In February 2013, the City of Escondido and the City of Escondido as Successor Agency to the Dissolved Escondido Redevelopment Agency filed a Complaint for declaratory and injunctive relief against the Department of Finance and State of California challenging the Department of Finance's determination that an unpaid balance of approximately \$35 million dollars currently owing by the Successor Agency to the City of Escondido is an unenforceable obligation. The Complaint seeks a determination that this loan is an enforceable obligation within the meaning of the California Health and Safety Code.

The City of Escondido and the Successor Agency had to name the Oversight Board as a Defendant in this matter solely because the Oversight Board has duties under the Dissolution Act with respect to approval and transmittal to the Department of Finance of each future ROPS submitted by the Successor Agency.

The Oversight Board was served with the Complaint on March 22, 2013, which means that the Oversight Board's responsive pleading is due on or before April 22, 2013. The City Attorney's office, working in conjunction with outside counsel, has granted the Oversight Board a 15-day extension of time to respond to the Complaint, and the Oversight Board's response is now due no later than May 7, 2013. The City Attorney's office has been in contact with Mr. Foley and made him aware of the current schedule. It is expected that any costs for Mr. Foley's work will be nominal.

Respectfully submitted,



Jeffrey R. Epp
City Attorney

**MCDUGAL LOVE ECKIS
BOEHMER & FOLEY IIIII**

April 3, 2013

Jeff Epp, City Attorney
Andrea Velasquez, Deputy City Attorney
City of Escondido
201 North Broadway
Escondido CA 92025-2709

Re: Proposal for Legal Services for the Oversight Board to the Successor Agency of the Redevelopment Agency of the City of Escondido

Dear Mr. Epp and Ms. Velasquez:

Thank you for informing us of this opportunity and for inviting our firm to present a proposal for legal services to represent the Oversight Board to the Successor Agency of the Redevelopment Agency of the City of Escondido in that certain matter entitled *City of Escondido, etc., et al. v. Ana Matasantos, etc., et al.*, Sacramento County Superior Court Case No. 34-2013-00140530. With an extensive background in representing cities, redevelopment agencies, and other governmental entities, in litigation throughout the State of California, this firm brings years of experience and expertise to each of its clients and we believe we will provide excellent service to the Oversight Board.

The law firm of McDougal, Love, Eckis, Boehmer & Foley was established in San Diego County in 1946 and since that time has represented cities and special districts in San Diego County longer than any other local law firm. The attorneys at McDougal, Love, Eckis, Boehmer & Foley combine over 100 years of litigation and municipal law experience.

As a mid-size legal firm with approximately 20 attorneys and professional staff members, we are large enough to provide our clients with a strong group of professionals who offer a variety of experience and specialties, but small enough to provide personalized service. This high level of service is the reason our firm has enjoyed longevity with many of our clients, some of whom we have represented for decades.

Legal services will be provided by myself, Morgan L. Foley, as lead counsel, with Morton Park to assist because of our experience with both redevelopment law and representation of governmental entities. Our resumes are attached.

Both Mr. Park and I are municipal attorneys, who are active in the League of California Cities City Attorneys Section and the City Attorneys Association of San Diego County. We regularly attend and participate in those organizations' conferences and programs. As the current City Attorney for the cities of El Cajon and Poway, I am currently counsel to the Successor Agencies of each of those cities. Mr. Park has provided legal services to these cities and the other municipal clients of our firm as well.

To represent the Oversight Board for the City of Escondido, we propose an hourly rate of \$175 for services provided. A statement of the firm's billing procedures is also attached.

We appreciate your interest in this firm and look forward to assisting the Oversight Board. If you have any questions or comments or would like additional information, please do not hesitate to contact me.

Very truly yours,



Morgan L. Foley, Esq.

Enclosures

Morgan L. Foley, Principal

Morgan L. Foley is the City Attorney for the cities of El Cajon and Poway, California, and the former City Attorney for Coronado.

From 1985 to April of 1998 Morgan was in private practice in Visalia, California, specializing in municipal law. Prior to relocating his practice to El Cajon he served as the City Attorney for the City of Porterville (1990-1998) and the City of Visalia (1996-1998).

Morgan has represented municipalities and special districts in California since 1985. He represents the firm's municipal clients, and other public agency clients in California, in municipal finance matters. He represented the City of El Cajon in one of the first cases in California applying the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), Foothills Christian Ministries, etc. v. City of El Cajon, etc., et al., U.S.D.C. (So. Dist. Cal.) Case No. 01- CV 1197 JM (JAH). He served as the interim City Attorney for Coronado from January through March of 2000, and served as City Attorney from December 2000 until September 2011. Morgan also serves as counsel to the City of National City Civil Service Commission, and is general counsel to the San Diego Area Housing and Finance Agency.

Morgan is active in the legal community and has presented topics relating to municipal law at the League of California Cities and continuing education seminars. He has also served on the League of California Cities' Legal Advocacy Committee and is a past President of the City Attorneys Association of San Diego County.

Morgan is admitted to practice before all courts in the State of California, the Southern and Eastern United States District Courts in the State of California, and the Ninth Circuit Court of Appeals.

Education

University of Santa Clara, J.D., 1985

University of California, Berkeley, A.B., 1981

Affiliations

California State Bar

San Diego County Bar Association

Foothills Bar Association

American Bar Association

Morton S. Park, Associate

Morton S. Park currently serves as Assistant City Attorney, Deputy City Attorney and Deputy General Counsel for many of the firm's public agency clients, regularly staffing City Council, Planning Commission and Board meetings. He advises on a wide range of public agency law matters, including land use, CEQA, Proposition 218, redevelopment, public works contracting, telecommunications facilities, Public Records Act, conflicts of interests, government ethics and code enforcement. Morton conducts AB 1234 ethics trainings for the firm's public agency clients.

Prior to joining the firm, Morton served as Deputy City Attorney for the City of San Diego in the criminal and civil divisions, where he successfully prosecuted criminal jury and bench trials and advised the Airports and Real Estate Assets Divisions on property transactions. In that capacity, Morton advised the Mayor and Council in closed session and presented to a City Council Committee on conflicts of interest issues. He has also represented the City of San Marcos as Deputy City Attorney and the Centre City Development Corporation as Deputy General Counsel, advising on general municipal and redevelopment law.

Morton has presented to the City Attorneys' Association of San Diego on multiple topics, including developing legally defensible request for proposal processes and reimbursement districts for capital improvements. He has also successfully represented several private clients in protesting public contracting awards ranging from several thousand to over ten million dollars.

Education

University of California, Hastings College of the Law, J.D. 2002
Claremont McKenna College, *cum laude*, History/Black Studies B.A., 1999

Affiliations

California State Bar
San Diego County Bar Association
City Attorneys Association of San Diego

STANDARD BILLING INFORMATION

The Firm charges for attorney and paralegal time in 1/10th hour increments and makes no separate charges for postage, secretarial or other administrative services. Our fees include all routine word processing, secretarial and office costs associated with the provision of legal services. Reimbursement of costs advanced by the Firm on behalf of the City, as well as other expenses, will be billed in addition to the amount billed for fees – these include actual expenses incurred by the Firm that are related to City business, including some long distance telephone charges, photocopy charges at the rate of \$.10 per page, and any costs of producing or reproducing photographs, documents, and other items necessary for legal representation.

The Firm does not charge for travel time or expenses for travel within San Diego County.

Costs will be billed at the Firm's actual costs, including, but not limited to, online legal service expenses, filing fees, copies, faxes and other expenses.

The Firm's schedule of rates will remain the same for the contract period.

The Firm maintains accurate, daily entries of its legal services. The entries are comprehensive, allowing the client to analyze the work performed and amount of time spent on specific tasks or projects. Monthly billings will include a report on the total amount of fees incurred by the client, to date of the invoice, and provides a breakdown of the work performed, and the professional providing each item of work.