

**MINUTES OF THE CITY OF SANTA CLARA OVERSIGHT BOARD FOR  
SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA REDEVELOPMENT  
AGENCY FOR A SPECIAL MEETING HELD ON FRIDAY, SEPTEMBER 19, 2014**

Chairperson Gage called the Special Meeting of the Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency to order at 2:01 pm, on the above-mentioned date in the City Hall Council Chambers.

Present: Mayor of the City of Santa Clara appointees: Gary Ameling, Director of Finance and Lisa Gillmor, Council Member; Santa Clara County Board of Supervisors appointees: Debbie Cauble, County of Santa Clara and John Guthrie, County of Santa Clara, retired, former Director of Finance; Santa Clara County Board of Education appointee: Kolvira Chheng, Santa Clara County Office of Education, Chief Business Officer; and Santa Clara Valley Water District (SCVWD) appointee: Don Gage, Board Member. Absent: California Community College District appointee: Edralin Maduli, West Valley-Mission Community College District, Vice Chancellor of Administrative Services.

City staff present: Ruth Shikada, Economic Development Officer/Assistant City Manager; Richard Nosky, City Attorney; Tom Webber, Successor Agency Legal Counsel, Goldfarb & Lipman, LLC; Tamera Haas, Assistant Director of Finance; Jennifer Yamaguma, Assistant City Clerk/Successor Agency Clerk; and Hilda Cantú Montoy, Outside Legal Counsel to the Oversight Board.

**MOTION** was made by Guthrie, seconded and unanimously carried with Cauble and Gillmor abstaining (not present at the meeting) (Maduli absent), that the **Minutes** for the meeting of **February 27, 2014** be adopted as written.

The Board proceeded to consider the adoption of a **Resolution** directing the **transfer of certain assets** to the **City of Santa Clara** and acknowledging that the Successor Agency has no interest in certain real property assets of the Santa Clara Housing Authority. The Economic Development Officer/Assistant City Manager reviewed the City Manager/Executive Officer to Successor Agency's memo (09/15/14) and provided a brief overview. Outside Legal Counsel to the Oversight Board then answered Board questions. **MOTION** was made by Cauble, seconded and unanimously carried (Maduli absent), that the Board **adopt Resolution No. 2014-02** entitled, "A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, DIRECTING THE TRANSFER OF CERTAIN ASSETS TO THE CITY OF SANTA CLARA AND ACKNOWLEDGING THAT THE SUCCESSOR AGENCY HAS NO INTEREST IN CERTAIN REAL PROPERTY ASSETS OF THE SANTA CLARA HOUSING AUTHORITY" which directs the transfer of certain assets to the City of Santa Clara and acknowledges that the Successor Agency has no interest in certain real property assets of the Santa Clara Housing Authority, as amended to remove all reference of California Health and Safety Code Section 34181(a).

The Board proceeded to consider the two alternatives with regard to adoption of a Resolution regarding **unspent Successor Agency bond proceeds**, which included: a) Resolution of the Oversight Board of the Successor Agency of the Redevelopment Agency of the City of Santa Clara directing the Successor Agency to defease/redeem unspent bond proceeds, making

certain findings and declarations, and taking related actions, and b) Resolution of the Oversight Board of the Successor Agency of the Redevelopment Agency of the City of Santa Clara directing the Successor Agency to obtain a defeasance/redemption plan for the unspent bond proceeds and such other information as deemed necessary by the Successor Agency in order to provide the Oversight Board with sufficient information in order to determine the appropriate use of the unspent bond proceeds. Chairperson Gage introduced the item and then Board Member Guthrie referred to his handout and stated, for the record, the following: *The City recently returned unspent proceeds from the 1999 issue of \$11.1 million and \$25 million to the Successor Agency from the 2011 issue and that this is the first time we have met since the transfer of those proceeds back to the Successor Agency. Consequently, this is our first opportunity, as Oversight Board Members, to decide the disposition of recently returned funds. Mr. Chair and members of the Board, this is not a new item – it is a continuing item. And, just to remind fellow Board Members, this came up over a year ago when we were looking at the 49er agreement and we were trying to figure out how we were going to pay for that. The question came up – could we use bond funds to pay for the 49ers? And, in two subsequent meetings we had back in July and August of 2013, both the County’s Bond Counsel – Orrick, and it was actually Chaz Cardall, and subsequently at the August 1 meeting it was Dave Walton, a partner of the City’s Bond Counsel, Jones Hall, showed up and we were expecting actually a conflict but they were both in agreement. And the agreement was this was kind of a difficult question but the real question centered on whether we as the Oversight Board were independent from the City and therefore, since we control the purse strings of the Oversight Board, the Successor Agency could be considered not part of the City, which would permit the use of those bond funds. In the testimony of Mr. Walton, it was decided that we would go for a preliminary private letter ruling to get indication by IRS if it was worth pursuing and we subsequently found out that it was not so that was never pursued. I went back yesterday and watched that discussion. And, Mr. Walton’s comments were very, very sobering and I’d like to just kind of give a brief summary of those comments: 1) He stated, “Having substantial proceeds from a 14 year old bond issue could subject the Successor Agency to risk of an IRS audit and substantial penalties”; 2) This risk is a risk of the Successor Agency not the City; 3) Under a worst case, the IRS could declare the bonds taxable and the bond holders would sue the City...or, excuse me, the Successor Agency for damages because they would have to amend tax returns back to ‘99, etc...this would go on forever. But, as a practical matter, you would have a closing agreement with the IRS that would involve substantial penalties. Now, Mr. Walton...when I basically said would it be in the couple of million dollar range, he didn’t state a number on the record and I’m not going to state a number, although I have done the computation and all of you could do that computation. But the computation is that the IRS would consider all interest paid on those bonds as money deprived from the US Treasury and they would tax it at 28 percent. This is huge. Mr. Walton described it as the potential penalty as huge as, ‘a major chunk of change’ and he advised that this could make a major hole in any unspent debt proceeds. What I have since learned is that the 1999 bonds could also raise problems for the two subsequent issues – the 2003 bonds and the 2011 bonds. So, we have to approve this item today – or by the end of the month if we have to adjourn and come back – because this item has to be approved before it can put on the ROPS. Now, I was really disappointed in the City Manager’s memo, which does not discuss any of these risks, that their own Bond Counsel appraised us of, instead it offered several reasons for not including this, which included the need for a financial analysis. I subsequently submitted a financial analysis, which was in all of your packets today – I gave it to the City yesterday – and it didn’t get out but it’s in your packet – and it’s not a perfect analysis – I even found a slight flaw that would change it by about \$300,000 – but basically, the bottom line is that if we...and this is only the 19...excuse*

me, the 2011 bonds, if we put this money into an escrow fund and defease those bonds, we would save in the range of \$37.7 million. Now, I didn't have time to do an analysis of the '99 bonds but that would be a straight forward analysis, the same way. Basically, we would save, at minimum, the \$11 million principal plus some undisclosed interest amount. So, now we are looking at \$37 million, practically 38, and \$11.1 million...we are getting close to the \$50 million range in savings from the early defeasment and redemption of these bonds. The argument for the '99 bonds in a little more severe than that because by the admission of the City's own Bond Counsel, these proceeds are radioactive and toxic right now and we need to dispose of those as soon as possible. I would offer two amendments to the Resolution that I submitted to the City: 1) That the timeline detailed in the supplemental be added to the ROPS. That the Successor Agency direct the trustee of the...excuse me, I'm sorry...that the numbers in the supplemental be added to the ROPS and those were the two amounts of the debt - \$25 million and \$11.1 million; and, 2) That the Successor Agency direct the trustee of the 2011 bonds – that would be the Bank of Mellon, New York – in writing, by January 7, 2011, to establish an escrow fund in the amount of \$25 million and to lock all proceeds into a US Treasury with a maturity date on or around June 30, 2011. The City Manager's written memo refers to sections of the Health and Safety Code that state that bonds are to be spent on their intended purpose but I would state that after 15 years now, the intended purpose no longer matters. What does matter is the primary purpose – issuers of tax exempt bonds and debt – their primary objective is to protect the tax-exempt status of that debt. That is the primary purpose...so, it is our responsibility as fiduciaries to do anything we can to protect the interest of the debt holders, to maximize return to the entities, and to minimize risk. I would, therefore, move approval of the Resolution, as amended. Further Board comments were made and questions were answered by the Outside Legal Counsel to the Oversight Board. Julio Fuentes, City Manager, and James Williams, Deputy County Executive, addressed the Board with general comments and Mr. Fuentes answered Board questions. Board Member Guthrie then, stated for the record: I apologize for the way that I asked the question. I was inartfully trying to remind everyone in this room that the liability belongs to the Successor Agency and not to the City. Again, the whole point of this...the City gets options for possibly the future expenditure of these funds at our expense and while we maintain substantial risk with IRS penalties. Further Board comments were made and the Successor Agency Legal Counsel, Goldfarb & Lipman, LLC, Outside Legal Counsel to the Oversight Board and the Economic Development Officer/Assistant City Manager made clarifying comments and answered further Board questions. **MOTION** was made by Gillmor, seconded and failed with Cauble, Chheng, Guthrie and Chairperson Gage dissenting (Maduli absent), to continue the matter until the restraining order issue has been resolved. **MOTION** was then made by Guthrie, seconded and carried with Ameling and Gillmor dissenting (Maduli absent), that the Board adopt **Resolution No. 2014-03** entitled, "A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY RELATING TO UNSPENT BOND PROCEEDS AND MAKING RELATED FINDINGS AND DECLARATIONS AND TAKING RELATED ACTIONS".

The Board proceeded to consider the adoption of a Resolution approving the Recognized Obligation Payment Schedule (ROPS) and an Administrative Budget for the period of January 1, 2015 through June 30, 2015. The Assistant Director of Finance reviewed the Director of Finance/Assistant City Manager's memo (09/15/14) and she and the Director of Finance/Assistant City Manager answered Board questions. A Board discussion followed. MOTION was made by Cauble, seconded and carried with Ameling and Gillmor dissenting, that the Board adopt Resolution No. 2014-04 entitled, "A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND AN ADMINSTRATIVE BUDGET FOR THE PERIOD JANUARY 1, 2015 THROUGH JUNE 30, 2015, MAKING RELATED FINDINGS AND DECLARATIONS AND TAKING RELATED ACTIONS IN CONNECTION THEREWITH" which approves the Recognized Obligation Payment Schedule (ROPS) and an Administrative Budget for the period of January 1, 2015 through June 30, 2015, as amended to delete item 32 entitled, "Martinson Child Development Center, 1350 Hope Drive"; revise item 13 – Administrative Cost Allowance to reflect the Oversight Board approved administrative budget amount within the allowed administrative cost allowance; further revise item 13 – Administrative Budget to reflect the reduced amount indicated for Successor Agency Outside Counsel to \$50,000 and that the Administrative Budget be capped at \$265,000; and, per the Board's earlier actions, to include lines 33 – Unspent 1999 Bond Proceeds and 34 – Unspent 20111 Bond Proceeds, related to the bond defeasements and the related notes. Board Member Gillmor stated, for the record, the following: *Item 32 – the \$4,999 – we are just stuck in the middle of this property...it will be given to the Successor Agency...we are just stuck in the middle of it right now...so the fact that we are not putting these fire safety repairs for low income children... just doesn't sit well with me. And, the fact that we are just trying to recover costs for our outside counsel...it would cost us more money to go back and try to defend ourselves for some of these things – some of the actions up here – that aren't quite legal. I think the fact that we should be reimbursed for what our actual costs are – that's only fair – and the numbers that you are cutting it down to that are just arbitrary.* Further Board comments were made and Outside Legal Counsel to the Oversight Board made clarifying comments.

The meeting was adjourned at 3:29 pm to a date and time to be determined by the Board.

APPROVE: Donald J. Gag  
Chairperson

ATTEST: Senfor Yamaguchi  
Clerk