## MINUTES OF THE CITY OF SANTA CLARA OVERSIGHT BOARD FOR SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY FOR REGULAR MEETING HELD ON TUESDAY, JUNE 18, 2013

Chairperson Gage called the Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency special meeting 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 Jamie L. Matthews, Mayor; Santa Clara County Board of Supervisors appointees: Jane Decker, County of Santa Clara, retired, former Deputy County Executive and John Guthrie, County of Santa Clara, retired, former Director of Finance; Santa Clara Valley Water District (SCVWD) appointee: Don Gage, Board Member; Santa Clara County Board of Education appointee: Micaela Ochoa, Santa Clara County Office of Education, Chief Business Officer; and 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; Richard Nosky, City Attorney; Tamera Haas, Assistant Director of Finance; Jennifer Yamaguma, Successor Agency Clerk; Hilda Cantú Montoy, Outside Legal Counsel to the Oversight Board; and Karen Tiedemann, Successor Agency Legal Counsel, Goldfarb & Lipman, LLC.

Chairperson Gage reported that the Board would adjourn to a <u>Closed Session</u> in the Council Conference Room for a Conference with Legal Counsel (Existing Litigation) pursuant to Government Code Section 54956.9(a), Forty Niners SC Stadium Company LLC v. Oversight Board of the Successor Agency to the City of Santa Clara Redevelopment Agency, et al., Sacramento County Superior Court Case No. 34-2012-80001192. The Oversight Board reconvened in the Council Chambers at 2:53 pm and Chairperson Gage noted that the Oversight Board would continue the Closed Session at the conclusion of this afternoon's meeting.

MOTION was made by Maduli, seconded and unanimously carried, that the Oversight Board approve the Minutes for the meeting of January 10, 2013, as corrected, January 18, 2013, as corrected, February 22, 2013, as corrected and May 10, 2013, as corrected.

The Oversight Board proceeded to consider the items for discussion and action as they relate to the <u>Stadium Agreements</u> and <u>Remand proceedings</u> pursuant to the <u>Court Order</u> in the <u>Forty Niners SC Stadium Co. v. Oversight Board</u>, including the adoption of a Resolution making determinations of the Stadium Agreements and their placement on the Recognized Obligation Payment Schedule (ROPS) 2013-14B. Because these proceedings are subject to the Court's remand, Hilda Cantú Montoy, Outside Legal Counsel to the Oversight Board, recommended that the Board receive the Successor Agency's report and recommendations, receive the Forty Niners comments, receive the County of Santa Clara's comments, receive comments from the members of the public and then return the matter to the dais for deliberation, at which time Oversight Board Members may ask questions of the various parties and make comments. Ruth Shikada, Economic Development Officer, provided introductory remarks. Karen Tiedemann, Esq., Successor Agency Legal Counsel, Goldfarb and Lipman, LLC, then reviewed the City Manager/Executive Officer to Successor Agency's memo (06/14/13), which noted that the Forty

Niners SC Stadium Company (StadCo) brought and filed a petition for a writ of mandate against the Oversight Board of the Successor Agency to the City of Santa Clara Redevelopment Agency with regards to the Oversight Board's determination to not list the Cooperation Agreement and the Predevelopment Funding Agreements related to the stadium project ("Stadium Agreements") on a Recognized Obligation Payment Schedule (ROPS). A hearing on the matter was held on March 22, 2013 and subsequent to the hearing, the Judge issued an Order finding that the Stadium Agreements are not unenforceable and remanded the matter to the Oversight Board to address three specific issues, including: (1) The Oversight Board must determine whether all preconditions set forth in the Stadium Agreements for payment have been met, including whether the Forty Niners actually incurred qualifying predevelopment costs; (2) The Oversight Board must determine whether other funding sources are available to pay the Forty Niners; and (3) The Oversight Board must determine what amounts are due to the Forty Niners for each ROPS period. She noted that the Judge ordered the Oversight Board to make the determinations set forth in the Order by June 28, 2013. In compliance with the Order, Ms. Tiedemann then provided the Successor Agency's recommendations with respect to the three issues, which briefly are as follows: (1) The Successor Agency has determined that all preconditions set forth in the Stadium Agreements have been met or validly waived. In addition, the Successor Agency provided the Oversight Board with a summary of the expenditures incurred by the Forty Niners (included in Agenda Report), which provides evidence that the Forty Niners have incurred qualifying redevelopment costs in an amount exceeding the \$30,249,620 original principal amount of the Agency Advance; (2) The only available source for payment of the Redevelopment Agency (RDA)'s obligations under the Stadium Agreement is net tax increment. The Successor Agency has no existing unallocated Redevelopment Agency (RDA) funds, or any proceeds from the issuance of bonds, available to satisfy the RDA's obligations under the Stadium Agreements; (3) The Stadium Agreements did not establish a payment schedule in the sense of identifying specific dollar amounts to be paid on particular dates because the parties could not have forecast what monies would be available for payment for particular periods. The Stadium Agreements did, however, establish a payment schedule in the only feasible manner; by requiring payment to the Santa Clara Stadium Authority/StadCo for each period of all net tax increment (all residual tax increment available after meeting the obligations specifically listed in Section 1.1(f) of the Cooperation Agreement). It was agreed to that all amounts left after payment of the specified superior obligations would be paid to the Stadium Authority/StadCo. The following amounts of residual tax increment are available for the specified ROPS periods, and are therefore due and payable to the Stadium Authority/StadCo pursuant to the Stadium Agreements, together with any interest that has accrued on these amounts as follows: a) ROPS II: \$12,803,944, b) July True Up Payment: \$378,540, c) ROPS III: \$2,139,655, d) ROPS 13-14(A): \$9,829,400 (per Santa Clara County Auditor-Controller as of May 24, 2013), and d) ROPS 13-14(B): Unknown. The amount of residual tax increment available has not yet been determined. She noted that none of these amounts represent either a windfall or an accelerated payment. The Successor Agency, Stadium Authority, StadCo and the County agree that more than \$25 million of residual tax increment has accrued. The entire sum is now due and payable under the terms of the Stadium Agreements to the Stadium Authority/StadCo. She noted that the Oversight Board has no legal authority to modify the Stadium Agreements or to impose a payment mechanism less advantageous to the Stadium Authority/StadCo than the one set forth in the Stadium Agreements. On behalf of the Forty Niners, Charmaine Yu, Coblentz, Patch, Duffy and Bass, LLP, then addressed the Oversight Board on the three issues outlined in the Court Order. As a preface, Ms. Yu stated that there is no disagreement with the position of the Successor Agency as set forth in the agenda memo or information

provided by Ms. Tiedemann. She then outlined the position of StadCo, with regard to the issues outlined, as follows: (1) Article 2 of the Cooperation Agreement to Assist a Publicly-Owned Stadium, dated as of February 28, 2011 (Cooperation Agreement) lists the "Preconditions to Disbursement of Agency Assistance." The RDA waived each of those conditions in the Predevelopment Funding Agreement, dated as of March 21, 2011; (2) StadCo does not have any objection to the position of the Successor Agency with regard to the determination that no other funding sources other than net tax increment are available; (3) StadCo believes that the Stadium Agreements should be listed as enforceable obligations on the upcoming ROPS and that the entire \$25 million, plus any residual tax increment in the next ROPS period, is due and should be payable to the Forty Niners. She noted that StadCo has incurred more than the amount advanced in qualifying predevelopment costs. On behalf of the County of Santa Clara, James Williams, Esq., Deputy County Executive, then addressed the Oversight Board and introduced Veronica Niebla, Controller-Treasurer's Department; Charles C. Cardall, Orrick, Herrington and Sutcliffe, LLP; and Steve Mitra, Deputy County Counsel, who, in turn, addressed the Oversight Board on the three issues outlined in the Court Order as follows: (1) Ms. Niebla referenced a letter from the Controller-Treasurer, dated June 18, 2013, which requests further time to review the information provided and requests the Successor Agency staff to provide further requested information to allow for a complete review; (2) Mr. Cardall referenced his letter addressed to the Director of Finance, County of Santa Clara, dated June 18, 2013, and noted that although the legal analysis set forth in the letter from Jones Hall to the Director of Finance, City of Santa Clara, dated June 6, 2013, regarding the use of the proceeds of the Redevelopment Agency of the City of Santa Clara Bayshore North Project Tax Allocation Bonds (Bonds) is a reasonably accurate description of the application of the general rules relating to the private business tests of the Internal Revenue Code of 1986, it does not discuss in detail or analyze certain special rules nor does it discuss that the City of Santa Clara and the Successor Agency to the Redevelopment Agency of the City of Santa Clara are not related entities for federal tax purposes. He noted that the purpose of his letter was to provide a more robust and complete analytical framework, which tentatively concludes that using Bond proceeds to repay the StadCo Agency Advance will not adversely affect the tax-exempt status of the Bonds and to note certain specific rules for allocating private payments away from the Bonds. While, in general, he agrees that the City and the Redevelopment Agency were related persons and he acknowledges that the bonds were issued by the Redevelopment Agency, that the Redevelopment Agency was legally obligated to repay the StadCo Agency Advance, and that the Redevelopment Agency transferred the Bond proceeds to the City, if the Successor Agency is not a related person to the City or the Stadium Authority for purposes of the tax analysis relevant to the tax status of the Bonds, there will be no private payments allocable to the Bonds with respect to the use of Bond proceeds to repay the StadCo Agency Advance. Based on his preliminary review, neither the Successor Agency and the City or the Successor Agency and the Stadium Authority are related persons for the purposes of the tax analysis relevant to the tax status of the bonds. He also stated that additional time would be needed in order to further analyze and to provide a more definitive conclusion. Mr. Cardall then answered Board questions; (3) Mr. Mitra referenced his letter, dated June 18, 2013, and, as outlined, stated that the County Auditor-Controller has taken the position that StadCo is not entitled to any additional benefits that are not part of the Stadium Agreements. Under the Stadium Agreements, StadCo is entitled to payment of the net tax increment, which he believes refers to tax increment generated in the Redevelopment Project Area of the Santa Clara Redevelopment Agency (RDA), minus the amounts that were required to be set aside for the Low and Moderate Income Housing Fund, debt service payments. payment to the City, passthrough payments, state-mandated payments and RDA administrative

costs. With that, the Forty Niners would be entitled to receive payment only if there was money left over after making these deductions. He noted that, in an analysis commissioned by the City of Santa Clara dated July 12, 2012, the earliest net tax increment available for payment to StadCo would have been Fiscal Year 2016-17. Therefore, it is appropriate for the Oversight Board to place payments to StadCo on the first Recognized Obligation Payment Schedule that applies for that fiscal year and not accelerate any payments to StadCo sooner than that time period. Christine Koltermann and Deborah Bress addressed the Oversight Board with comments of concern. James Rowen addressed the Oversight Board with general comments. Ms. Yu then addressed the Oversight Board with clarifying comments with regard to comments made by the County of Santa Clara representatives and answered Oversight Board questions. Ms. Montoy stated that the Judge has ordered the Oversight Board to make the determinations set forth in the Order by June 28, 2013. However, she noted that, at the direction of the Oversight Board, she could prepare and submit a letter advising the Court that the Oversight Board had done extensive work but that a significant amount of further information was needed and therefore, more time would be necessary but that a determination would be made by the Oversight Board prior to ROPS V [ROPS 13-14(B)]. She also provided clarifying comments with regard to the timing of ROPS V [ROPS 13-14(B)] and the time frame of when money would be distributed under that ROPS. She clarified that under the Dissolution Law, the Oversight Board is the governing board that needs to make the decision with regard to the payments and the addition of the Stadium Agreements on the ROPS. With that, the Oversight Board needs to determine what amount is payable under the Stadium Agreements, what funds will be used to pay any obligation and then, what amounts are due to the Forty Niners for each ROPS period. Further Oversight Board questions were answered by Ms. Niebla, Ms. Tiedemann and Mr. Cardall and general Oversight Board comments were made. Mr. Mitra and Mr. Williams then addressed the Oversight Board with clarifying comments with regard to comments made by Ms. Yu and answered further Oversight Board questions. MOTION was made by Matthews, seconded and unanimously carried, that the Oversight Board continue consideration of any action related to the Stadium Agreements and remand proceedings pursuant to Court Order in Forty Niners SC Stadium Co. v. Oversight Board Case, including the adoption of a Resolution making determinations of Stadium Agreements and their placement on Recognized Obligation Payment Schedule (ROPS) 2013-14B, until further information is coordinated and received through the Oversight Board Outside Legal Counsel and provided to the Oversight Board, for consideration at the next regular scheduled meeting of July 19, 2013. The Oversight Board Special Meeting scheduled for Friday, June 21, 2013 was cancelled. After preparation of the above-referenced letter to the Court seeking a time extension for the determination of issues outlined within the Court Order, Ms. Montoy would provide a copy to the Oversight Board for reference.

The Oversight Board then proceeded to consider the Low and Moderate Income Housing Fund Due Diligence Review. Karen Tiedemann, Esq., Legal Counsel, Goldfarb and Lipman, LLC, reported that a determination letter was received from the Department of Finance, which specifically referenced the ability to enter into an installment payment agreement with the Department of Finance. The Successor Agency is working with the Department of Finance on the terms of the agreement and a final agreement is anticipated within the upcoming month. Christine Koltermann and Deborah Bress addressed the Oversight Board with comments of concern. James Rowen addressed the Oversight Board with general comments.

The Board adjourned at 5:01 pm to continue the <u>Closed Session</u> in the Council Conference Room for a Conference with Legal Counsel (Existing Litigation) pursuant to Government Code Section 54956.9(a), Forty Niners SC Stadium Company LLC v. Oversight Board of the Successor Agency to the City of Santa Clara Redevelopment Agency, et al., Sacramento County Superior Court Case No. 34-2012-80001192. The Board reconvened in the City Hall Council Chambers, at 5:47 pm, and the Chairperson noted that there was no reportable action.

With no further business, the meeting was adjourned at 5:48 pm to Tuesday, <u>July 19, 2013</u> at 2:00 pm for the regular scheduled meeting in the City Hall Council Chambers.

APPROVE:

Chairperson

ATTEST: