

SANTA CLARA COUNTY



September 26, 2014

Justyn Howard, Assistant Program Budget Manager
Department of Finance
State of California
915 L Street
Sacramento, CA 95814-3706

Re: Oversight Board Resolution No. 2014-03

Dear Mr. *Howard* Howard:

This letter is to object to the action of the Oversight Board of the City of Santa Clara (the "Oversight Board") in ordering the staff of the Successor Agency to the Santa Clara Redevelopment Agency (the "Successor Agency") to dispose of bond proceeds derived from two bond issuances by the former redevelopment agency: a 1999 bond issuance (the "1999 Bonds") and a 2011 issuance (the "2011 Bonds") and to request that the Department of Finance (the "DOF") disapprove Oversight Board Resolution No. 2014-03.

In its meeting of September 19, 2014, the Oversight Board summarily ordered Successor Agency staff to transmit the proceeds of the 2011 Bonds to the fiscal agent to be held in an irrevocable escrow account and used to legally defease and redeem the bonds and directed that the proceeds be invested in a U.S. Treasury bond with a maturity date around the call date for the 2011 Bonds. The Oversight Board also ordered that the unexpended proceeds from the 1999 bonds be transmitted to the fiscal agent and the fiscal agent be directed to call or redeem as many of the 1999 Bonds as possible. The Oversight Board ordered the payments related to both the 2011 Bonds and the 1999 Bonds be placed on ROPS 14-15B.

The Oversight Board last met in February 2014 to approve ROPS 14-15A. In the succeeding seven months, no member of the Oversight Board or of the County of Santa Clara contacted the Successor Agency to discuss the disposition or use of the 1999 Bonds or the 2011 Bonds. In the afternoon of Thursday, September 11, 2014, just six working days before the planned Oversight Board meeting, counsel for the Oversight Board forwarded an agenda item to the Successor Agency, originating from one of the County's Oversight Board appointees, that called for the call/redemption of the 1999 Bonds and the disposal of the 2011 Bond proceeds. The agenda item request was later amended on September 15, 2014 with a request to put this disposal of the bond proceeds on the ROPS 14-15B and on September 18, 2014 the Successor Agency received a pro forma developed by the Oversight Board member purportedly

showing how the affected taxing agencies would benefit from the proposed Oversight Board action (a proforma that the Oversight Board member admitted at the meeting contained errors).

In attempting to perform its duties to the taxing agencies to maximize the value of the Successor Agency assets, the Successor Agency requested time to perform its due diligence and develop a comprehensive defeasance plan for the 2011 Bonds to present to the Successor Agency governing board and the Oversight Board. This request was denied by the Oversight Board. The Successor Agency also objected to the call/redemption of the 1999 Bonds based on the clear intent of the legislature in AB 1484 that once a successor agency had obtained a finding of completion, a successor agency had the right to use pre-2011 bonds for the purposes for which they were issued.

The placement of the bond payments on the ROPS 14-15B is premature since there is no enforceable obligation to support the payments. The Oversight Board attempted to create a new enforceable obligation out of thin air. There is no statutory authority that allows an Oversight Board to create an enforceable obligation, order it to be placed on a ROPS, and attempt to bind the successor agency without the concurrence of the successor agency governing board. Health and Safety Code Section 34181(e) specifically provides that if an oversight board determines that a contract should be terminated or renegotiated that the oversight board shall direct the successor agency to present proposed termination or amendment agreement to the oversight board for its approval. The statute does not authorize an oversight board to act in the stead of a successor agency. By ordering the Successor Agency to place a new enforceable obligation on ROPS 14-15B, the Oversight Board acted outside of its statutory authority and overstepped its bounds. If DOF elects to disapprove the Oversight Board action in Resolution No. 2014-03, the Successor Agency will (unless the Dissolution Act is modified as a result of bills currently being considered by the Governor affecting the use of 2011 bonds) construe the Oversight Board action as direction to Successor Agency staff to develop a defeasance plan for the 2011 Bonds and, with Successor Agency governing board concurrence, will return to the Oversight Board for approval of the plan and its related agreements.

The required call/redemption of the 1999 Bonds is another attempt of the Oversight Board to act outside of its authority and to skirt the statutory treatment of pre-2011 bonds. Health and Safety Code Section 34191.4(c)(1) states: "Bonds proceeds derived from bonds issued on or before December 31, 2010 *shall be used* for the purposes for which the bonds were sold". (Emphasis added.) The legislature clearly granted the opportunity, if not the requirement, for the Successor Agency to use the proceeds of the 1999 Bonds for the purposes for which the bonds were sold. But for the Dissolution Act, the former redevelopment agency was moving forward with the expenditure of those bonds. The Successor Agency has a list of designated projects that were to receive funding from the 1999 Bond proceeds and the Successor Agency fully intended to expend the 1999 Bond proceeds on those projects once the

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Successor Agency obtains its finding of completion. The Oversight Board has no authority to disregard the clear legislative authorization that pre-2011 bonds may be expended by a successor agency or purposes for which they were intended.

For the reasons enumerated above, the Successor Agency requests that the DOF disapprove the action taken by the Oversight Board in Resolution No. 2014-03. The Oversight Board has no statutory authority to unilaterally create an enforceable obligation to place on ROPS 14-15B and the Oversight Board cannot contravene the express provisions of Health and Safety Code Section 34191.4(c)(1), which grants the Successor Agency the authority to expend the proceeds of the 1999 Bonds.

We would be happy to answer any questions on this matter.

Sincerely,



Julio J. Fuentes

City Manager

Executive Officer to Successor Agency