

RESOLUTION NO. 2013-05 (OVERSIGHT BOARD)

**RESOLUTION OF THE OVERSIGHT BOARD FOR
SUCCESSOR AGENCY TO THE CITY OF SANTA CLARA
REDEVELOPMENT AGENCY MAKING CERTAIN FINDINGS
AND DETERMINATIONS REGARDING THE STADIUM
AGREEMENTS**

WHEREAS, the Redevelopment Agency of the City of Santa Clara ("former RDA") and the Santa Clara Stadium Authority ("Stadium Authority") entered into that certain Cooperation Agreement to Assist Publicly Owned Stadium Dated February 22, 2011 ("Cooperation Agreement") whereby the former RDA agreed to advance to the Stadium Authority funds from available tax increment to assist in the construction and development of a new stadium located in the Bayshore North Redevelopment Project Area and suitable for professional football ("Stadium"); and

WHEREAS, the former RDA, the Stadium Authority and Forty Niners Stadium, LLC, a Delaware limited liability company ("StadCo") entered into that certain Predevelopment Funding Agreement dated as of March 21, 2011 ("Predevelopment Funding Agreement") (the Cooperation Agreement and the Predevelopment Funding Agreement are collectively referred to herein as the "Stadium Agreements") whereby StadCo agreed to advance certain funds to the Stadium Authority for costs associated with the Stadium and the Stadium Authority and the former RDA agreed that such advances would be repaid from the funds provided by the former RDA to the Stadium Authority pursuant to the Cooperation Agreement; and

WHEREAS, the former RDA, along with all redevelopment agencies in the State of California, was dissolved effective February 1, 2012 pursuant to AB x1 26; and

WHEREAS, in accordance with AB x1 26, the City of Santa Clara ("City") elected to serve as the Successor Agency to the former RDA and pursuant to AB 1484, the Successor Agency is deemed to be a separate public entity (hereafter referred to collectively as Dissolution Law); and WHEREAS, in accordance with the Dissolution Law, an Oversight Board was appointed for the Successor Agency; and

WHEREAS, the Oversight Board in June 2012 determined not to place the Stadium Agreements on a Recognized Obligation Payment Schedule ("ROPS"); and

WHEREAS, StadCo sought a writ of mandate in Sacramento Superior Court requiring the Oversight Board to withdraw its determination not to list the Stadium Agreements as enforceable obligations on any ROPS and approve an amended ROPS II and ROPS III listing the Stadium Agreements as enforceable obligations (*Forty Niners SC Stadium Co., LLC, vs. Oversight Board of the Successor Agency to the City of Santa Clara Redevelopment Agency*, Case No. 34-2012-80001192); and

WHEREAS, StadCo petitioned the Sacramento Superior Court for a preliminary injunction preventing the County of Santa Clara Auditor-Controller from distributing funds deposited in the Redevelopment Property Tax Trust Fund ("RPTTF") to any taxing entities from any ROPS until the Oversight Board has satisfied its obligations with respect to the Stadium Agreements, which preliminary injunction was granted by the Court; and

WHEREAS, a hearing on the merits of StadCo's petition was held on March 22, 2013 at which time the Court determined that the Stadium Agreements were not invalid under Health and Safety Code Section 34171(d) and remanded to the Oversight Board determinations as to (i) whether all preconditions set forth in the Stadium Agreements for payments to StadCo have been met, including whether StadCo has incurred the predevelopment costs; (ii) whether there

are other funding sources available to pay StadCo; and (iii) the amounts that are due to StadCo; and

WHEREAS, the Oversight Board has been presented with evidence, comments, and argument regarding the remand issues from the Successor Agency, StadCo, the County of Santa Clara, has heard public testimony on the issues, and has fully considered the issues set forth in the Court's remand order; and

WHEREAS, the Oversight Board is satisfied that all preconditions for payment to StadCo have been made; and

WHEREAS, the Oversight Board is concerned with the issue presented concerning the source of funds for repayment as there are unresolved issues as to the ability to utilize the former RDA's bond proceeds which now reside in the City's accounts and which are the subject of litigation and a pending Court impoundment order resulting from litigation by the County of Santa Clara versus the City relating to asset transfers from the former RDA to the City; and

WHEREAS, the Oversight Board has a fiduciary obligation to taxing entities which may have their tax distributions reduced if bond proceeds may not be used; and

WHEREAS, the Stadium Agreements provide for repayment from net tax increment as defined therein; and

WHEREAS, the Stadium Agreements do not contain specific terms relating to a payment schedule and dates for payment; and

WHEREAS, the Stadium Agreements did not guarantee that any tax increment would actually be available for repayment to StadCo; and

WHEREAS, the Stadium Agreements did not obligate the former RDA to provide a minimum level of tax increment; and

WHEREAS, the Predevelopment Agreement provides that repayment will be made from Net Tax Increment resulting after deducting superior obligations; and

WHEREAS, the superior obligations include statutory obligations such as the mandatory Low and Moderate Income Housing set aside which was eliminated by the Dissolution Law; and

WHEREAS, the superior obligations also included obligations invalidated under the Dissolution Law such as agreements between the City and former RDA; and

WHEREAS, the purpose of the Dissolution Law was to increase the share of property taxes for distribution to cities, counties, schools, and other public agencies for core governmental services; and

WHEREAS, repayment under the Stadium Agreements was premised on the tax increment financing scheme under the California Redevelopment Law which has been abolished by the Dissolution Law; and

WHEREAS, the term "tax increment" is not a term used under the Dissolution Law; and

WHEREAS, Section 1(i) of the legislature's finding in AB x1 26 provides:

"(i) Upon their dissolution, any property taxes that would have been allocated to redevelopment agencies will no longer be deemed tax increment. Instead, those taxes will be deemed property tax revenues and will be allocated first to successor agencies to make payments on the indebtedness incurred by the dissolved redevelopment agencies, with remaining balances allocated in accordance with applicable constitutional and statutory provisions."; and

WHEREAS, statutory authority for the use of tax increment financing has been made inoperative pursuant to the Dissolution Law including but not limited to Health & Safety Code Section 34189; and

WHEREAS, the Dissolution Law ensures existing enforceable obligations are to be honored (Health and Safety Code Sections 34167, 34169, 34177); and

WHEREAS, revenue estimates and projections regarding the amount of payments that StadCo would have received had the Dissolution Law not been adopted are set forth in Table 2 of report dated July 25, 2012, by Keyser Marston (hereafter referenced as "Net Tax Increment Formula Model,"); and

WHEREAS, had the Dissolution Law not been adopted, the payment to StadCo under the Net Tax Increment Formula Model would be zero dollars; and

WHEREAS, repayments on the Stadium Agreements commencing in 2016 may provide immediate revenue to taxing entities, the overall payment to StadCo may end up higher because of the mounting interest rate and the lag period for commencing repayment thereby reducing net property tax revenues to taxing entities; and

WHEREAS, Health & Safety Code Section 34181(e) provides for the renegotiation of agreements that constitute enforceable obligations to reduce liabilities and increase net property tax revenues to taxing entities; and

WHEREAS, renegotiation of the Stadium Agreements would allow StadCo to obtain payments sooner and also reduce liabilities to taxing entities.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE CITY OF SANTA CLARA REDEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. The recitals set forth above are true and correct and are incorporated into this resolution by this reference as if fully set forth.

SECTION 2. The Oversight Board after reviewing all of the evidence, argument, and information presented makes the following findings:

(a) All preconditions for payment to StadCo under the Cooperation Agreement have been met.

(b) StadCo has incurred \$33,918,043 in predevelopment costs of which only \$30,249,619.47 has been charged to the Predevelopment Funding Agreement in accordance with the terms of the Predevelopment Funding Agreement.

(c) Based on the Superior Court's Modified Court Order of May 2013, the Stadium Agreements are enforceable obligations under Health and Safety Code Section 34171(d)(1); and Subsection (d)(2) of Section 34171 does not apply to the enforceability of these agreements based upon the intent of the agreements that StadCo is a third party beneficiary with enforceable rights to the Cooperation Agreement.

(d) The Stadium Agreements provide that StadCo will be repaid pursuant to the Net Tax Increment Formula Model described in the recitals above and incorporated in this finding.

(e) The California Legislature found and declared in enacting the Dissolution Law that the residual amount remaining after payment of enforceable obligations does not constitute tax increment. Instead those amounts are deemed property tax revenues for allocation.

(e) It would be against public policy and the intent of the Dissolution Law to advance payments from the Court-impounded RPTTF monies and from RPTTF for ROPS 13-14B to StadCo when StadCo would not have received such a payment for such ROPS periods but for the adoption of the Dissolution Law. Such payments to StadCo would constitute a windfall to StadCo and frustrate the Dissolution Law's intended purpose which was to free up property taxes for distribution to taxing entities.

(f) Payment to StadCo under the Net Tax Increment Formula Model provides StadCo with the benefit of its bargain.

(g) The Oversight Board has a fiduciary duty to both holders of enforceable obligations and to taxing entities. Renegotiation of the Stadium Agreements to create a payment schedule that allows for sharing by StadCo and taxing entities of current impounded RPTTF monies and which sets a precise payment amount and payment schedule is in the best interest of StadCo and the taxing entities.

(h) To ensure that the policy underlying the Dissolution Law relating to the use of bond proceeds for obligations such as the Stadium Agreements it is necessary to secure an IRS opinion.

(i) It is understood that finality on asset transfers from the former RDA to the City including bond proceeds currently rests with the Superior Court.

SECTION 3. The Stadium Agreements shall be designated on ROPS 13-14B as enforceable obligations. The amount shall reflect \$30,249,619.47 as owing with interest continuing to accrue.

SECTION 4. Pursuant to the Net Tax Increment Formula Model, the payment due to StadCo under the Stadium Agreements for ROPS periods I,II,III, IV, and 13-14B, shall be designated on the ROPS 13-14B as zero dollars.

SECTION 5. Pursuant to Health and Safety Code Section 34181(e), the Successor Agency is directed to renegotiate the Stadium Agreements with StadCo. General Counsel to the Oversight Board is directed to assist in the renegotiation of the Stadium Agreements between the Successor Agency and StadCo. The purpose of the renegotiation is to develop a schedule that:

(a) will allow for sharing of RPTTF between the taxing entities and StadCo;

(b) will include a payment schedule with precise amounts due; and

(c) will allow for retirement of the debt to StadCo in a shorter period of time thereby resulting in better results for both StadCo and the taxing entities. Any resulting renegotiated agreement shall be presented to the Oversight Board within 30 days to allow for the Oversight Board's timely approval of renegotiated amounts due to StadCo under ROPS 13-14B.

SECTION 6. The Successor Agency and Oversight Board General Counsel are directed to prepare a request for an IRS ruling with the participation of bond counsel for the Successor Agency and the County of Santa Clara Auditor-Controller relating to the 2011 Bond proceeds at issue. The request shall be in accordance with Exhibit A to this resolution.

SECTION 7. The Successor Agency is directed to provide this resolution, written notice, and information about this action to the Department of Finance, the County of Santa Clara Auditor-Controller, and the State of California Controller as required by law and to post this resolution on the Successor Agency's website as required by law.

SECTION 8. Pursuant to Health and Safety Code Section 34179(h), this resolution shall not be effective until five (5) business days after notice has been provided to the Department of Finance, unless the State of California Department of Finance requests a review.

CERTIFICATION

I hereby certify the foregoing to be a true copy of a resolution passed and adopted by the Oversight Board for Successor Agency to the City of Santa Clara Redevelopment Agency at a special meeting thereof held on August 1, 2013, by the following vote:

AYES: BOARD MEMBERS: Ameling, Guthrie, Maduli, Matthews and Ochoa and Chairperson Gage

NOES: BOARD MEMBERS: McInerney

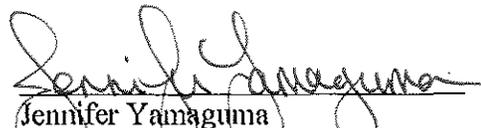
ABSENT: BOARD MEMBERS: None

ABSTAIN: BOARD MEMBERS: None

APPROVE:

ATTEST:


Donald F. Gage
Chairperson


Jennifer Yamaguma
Clerk to the Oversight Board

Attachments incorporated by reference:
1. Exhibit A

EXHIBIT A TO OVERSIGHT BOARD RESOLUTION

1. Direct the Oversight Board's legal counsel and Successor Agency to work together to request a letter ruling from the IRS by August 15, 2013 regarding the following questions with respect to bond proceeds of the former RDA:
 - (a) whether unspent bond proceeds from the 2011 TABs may be used to repay all or part of the Stadium Authority advances under the Stadium Agreements without jeopardizing the federal tax-exempt status of the bonds; and
 - (b) whether funds reflecting the reimbursement or offset of former Redevelopment Agency bond proceeds spent by the City of Santa Clara on public capital projects after June 27, 2011 from the 2011 TABs may be used to repay all or part of the Stadium Authority advances under the Stadium Agreements without jeopardizing the federal tax-exempt status of the bonds.
2. If an IRS letter ruling is obtained on or before January 2, 2014 (the disbursement date for ROPS 13-14B funds) answering questions 1(a) and/or 1(b) in the affirmative, then the enforceable obligations that are due on the Stadium Agreements for ROPS 13-14B and future ROPS periods shall be paid with unspent bond proceeds or funds reflecting the reimbursement or offset of the former Redevelopment Agency's bond proceeds spent by the City of Santa Clara. If, by January 2, 2014, no IRS letter ruling is obtained *or* the IRS issues a letter ruling answering both questions 1(a) and 1(b) in the negative, then an enforceable obligation that is due to the Stadium Authority on ROPS 13-14B shall be paid with funds from the RPTTF.
3. With respect to amounts the Oversight Board determines are due on the Stadium Agreements for ROPS periods beyond ROPS 13-14B, those amounts shall be paid with unspent bond proceeds or funds reflecting the reimbursement or offset of the former Redevelopment Agency's bond proceeds spent by the City of Santa Clara if, on or before the disbursement date for the particular ROPS period at issue, an IRS letter ruling is obtained answering questions 1(a) and/or 1(b) in the affirmative. Otherwise, the obligations shall be paid with funds from the RPTTF.
4. If payment is made from the RPTTF because no IRS letter ruling was received by the disbursement date for the ROPS period(s) in question, and an IRS letter ruling is subsequently obtained answering questions 1(a) and/or 1(b) in the affirmative within the reimbursement period allowed by federal tax laws and regulations, the Oversight Board hereby declares its intent to use bond proceeds from 2011 TABs to reimburse the taxing entities for the payments funded from RPTTF, as allowed under federal tax laws and regulations.

5. If an IRS letter ruling is obtained answering questions 1(a) and/or 1(b) in the affirmative, but the Successor Agency does not have possession of the unspent bond proceeds or funds reflecting the reimbursement (or tax offsets) of the former Redevelopment Agency's bond proceeds spent or held by the City of Santa Clara by the disbursement date for the particular ROPS period at issue, then the source of payment for the enforceable obligation to the Stadium Authority shall be RPTTF funds; provided, however, that once the Successor Agency obtains possession of the unspent bond proceeds or funds reflecting the reimbursement (or tax offsets) of the former Redevelopment Agency's bond proceeds spent or held by the City of Santa Clara, those bond proceeds or other funds shall constitute other sources of payment pursuant to Health & Safety Code section 34177(l)(1)(B) or (C) and, to the extent allowed by law and without jeopardizing the federal tax-exempt status of the bonds, shall be: (i) used to pay enforceable obligations on future ROPS until those bond proceeds, reimbursed funds or offsets are exhausted; and/or (ii) remitted to the County of Santa Clara Auditor-Controller for distribution to the taxing entities.