

**Oversight Board Meeting
of the Successor Agency City of Foster City**

SPECIAL MEETING

April 18, 2012; 8:00 a.m.

Location:
Council Chambers – Conference Room
City of Foster City
620 Foster City Blvd
Foster City, CA

1. Call to Order
2. Public Comment
 - a. *This is an opportunity for the public to address the Oversight Board on any item that is not on the agenda. Time for public comment may be limited at the discretion of the Chair.*
3. Minute Approval
 - a. April 10, 2012
4. Resolutions for Adoption
 - a. A Resolution Approving the Recognized Obligation Payment Schedule for the Period January 2012 to June 2012
 - i. *Note: Board Members are requested to bring their binders from the April 10 meeting.*
5. Reports
6. Old Business
 - a. Update on Directors and Errors & Omissions Insurance
 - i. Item recommended to be tabled to the April 25 meeting to provide quotes and options
7. New Business
 - a. Discussion of Effect of Agreements Between City of Foster City and former Agency after January 1, 2011
 - i. Cooperative Services Agreement
 - ii. Public Improvement Reimbursement Agreement
 - iii. Affordable Housing Reimbursement Agreement
8. Member Statements and Requests
9. Adjournment

Any attendee requiring special accommodations should contact Steve Toler, Assistant City Manager, at 650-286-3214 or SToler@fostercity.org at least 24 hours in advance of the meeting.

Note: Any writings or documents provided to a majority of the Oversight Board regarding any item on this agenda after the agenda packet was distributed will be made available for public inspection at the office of the Assistant City Manager located at Foster City City Hall, 610 Foster City Blvd., Foster City, during normal business hours and also made available in a marked binder at current and future meetings.

**Oversight Board
Successor Agency City of Foster City**

Minutes

Meeting Date:
April 10, 2012, 8:00 a.m.

Foster City Council Chambers Conference Room
620 Foster City Blvd., Foster City, CA 94404

Members Present: **Chair Dick W. Bennett, Vice-Chair Mary McMillan, Members Jim Keller, Linda Koelling, Elizabeth McManus (present for items #4-9), Rick Wykoff**

Members Absent: **Tina Acree (vacation)**

Staff Present: **Steve Toler (Assistant City Manager / Secretary), Jim Hardy (City Manager), Curtis Banks (Community Development Director), Lin-Lin Cheng (Finance Director), Jerry Ramiza (Burke, Williams & Sorenson – Legal Counsel to Successor Agency)**

1. Call to Order – **Meeting was called to order by Chair Bennett at 8:03 a.m.**
2. Public Comment - **None**
3. Minute Approval
 - a. April 5, 2012
 - i. **Secretary Toler indicated one recommended change to Item 9(a), adding the sentence “Motion passed 7-0-0” to the end of the paragraph.**
 - ii. **Motion made by Member Koelling, seconded by Vice-Chair McMillan, to approve the minutes as amended. Motion passed 5-0-2 (Members Acree and McManus absent)**
4. Resolutions for Adoption
 - a. A Resolution Approving the Recognized Obligation Payment Schedule for the Period January 2012 to June 2012
 - i. **Chair Bennett indicated that his preference would be to discuss each item on the ROPS and make separate motions for each item. The Board concurred with that approach. Discussion was held on each item identified below. The motions and direction provided on each item are as follows:**

Project Area One

Item	Motion	Made / Second	Vote
A	Approve obligation to SMUHSD as a valid enforceable obligation – Motion Passed	RW / LK	6-0-1
A	Request legal counsel to opine on whether or not the obligation should be liquidated immediately based on the definition of “District’s Total Share” in the Stipulated Judgment Section 2.8 and 9.0, or if payments should be made in accordance with the schedule shown in Exhibit A of the Stipulated Judgment – Motion Passed	DB / MM	4-2-1 (LK and RW “no”)
B	Table deliberation on Sares-Regis obligation pending discussion with County Controller’s Auditor Macias, Gini, O’Connell (MGO) as to their finding of “No” under Procedure #3 in their report – Motion Passed	MM / JK	6-0-1
C	Approve obligation to Human Investment Project (Homeshare Program) as a valid enforceable obligation – Motion Passed	RW / LM	6-0-1
D	Approve obligation to Burke, Williams & Sorensen as an enforceable obligation and terminate contract and funding effective 6/30/2012 – Motion Passed	DB / MM	5-1-1 (Keller “no”)
E	Approve obligation to Fraser & Associates as an enforceable obligation and terminate contract effective May 31, 2012, eliminating the June 2012 obligation in the ROPS – Motion Passed	LM / MM	5-1-1 (Keller “no”)
F	Approve obligation to Metropolitan Planning Group as an enforceable obligation and terminate contract and funding effective 6/30/2012 – Motion Passed	RW / MM	5-1-1 (Keller “no”)
G	Approve obligation to Housing Endowment and Regional Trust of San Mateo County (HEART) as an enforceable obligation – Motion Failed	LK / RW	2-4-1 (DB, JK, LM, MM “no”)
G	Table deliberation on HEART obligation pending 1) finding out how other Oversight Boards have treated the HEART obligation; and, 2) opinion from legal counsel as to whether or not the HEART JPA with the City can be considered an enforceable obligation of the Successor Agency based upon the former Agency’s actions in approving the expenditure in its Annual Budgets without a contract or agreement between HEART and the former Agency – Motion Passed	MM / LM	5-1-1 (RW “no”)

Item	Motion	Made / Second	Vote
H	Approve obligation to Angel Landscaping as an enforceable obligation and terminate contract and funding effective 6/30/2012 – Motion Passed	RW / LK	6-0-1
I	Approve obligation to Human Investment Project (Property Management Services) as an enforceable obligation and terminate contract and funding effective 6/30/2012 – Motion Passed	LM / MM	6-0-1
J	Approve obligation to Sand Harbour South as an enforceable obligation and terminate funding effective 6/30/2012 – Motion Passed	RW / LK	5-1-1 (DB “no”)
K	Approve obligation to Emerald Bay of Foster City as an enforceable obligation and terminate funding effective 6/30/2012 – Motion Passed	LM / MM	4-2-1 (DB, JK “no”)
L	Approve obligation to Terminix International as an enforceable obligation and terminate contract and funding effective 6/30/2012 – Motion Passed	LK / LM	6-0-1
M	Table deliberation on Verde Design Inc. pending opinion from legal counsel in regards to whether or not the Public Improvement Reimbursement Agreement is a valid contract under the provisions of H&S Code §34171(d)(2) – Motion Passed	DB / MM	6-0-1
N	Table deliberation on City of Foster City (Admin Support Services) pending production of an Administrative Budget for the Successor Agency and opinion from legal counsel in regards to the source of payment of Administrative Costs for Project Area One in that the Project Area no longer receives tax increment and whether or not there was an enforceable obligation for the Former Agency to pay these administrative costs – Motion Passed	JK / MM	6-0-1

(Made / Second column represents the initials of the Board member who made the original Motion and who Seconded that motion.)

Notes:

- In regards to all votes, Member Acree was absent.
- In regards to Item A(2), Members Koelling and Wykoff voted “no” as they felt the obligation should continue to be paid in accordance with the prescribed schedule.
- In regards to Items D, E and F, Member Keller voted “no” as he felt the obligation should be reflected in the Administrative Budget of the Successor Agency.

- In regards to Item G, Member Wykoff voted “no” based on his belief that the costs for the HEART program should continue to be an obligation of the Successor Agency as it furthers the former Agency’s initiatives relative to affordable housing.
- In regards to Items J and K, Chair Bennett and Member Keller (for Item K), voted “no” as this would represent an obligation without an asset, and that since the assets were transferred to the City as Successor Housing Agency on January 31, 2012, as the new owner the Successor Agency should pay for these operating costs.
- In regards to Item J, a prior motion to recognize the obligation only for January 2012 (motion DB, second MM) approved by a vote of 4-2-1 (LK and RW “no”) was rescinded based on motion to reconsider (motion RW, second LM) by a vote of 4-2-1 (DB and JK “no”).
- Discussion of Marlin Cove and Hillsdale/Gull obligations was tabled to the following meeting on April 18, 2012 in the interest of time.

5. Reports

6. Old Business

a. Update on Agreement for Professional Legal Services with Craig Labadie

- i. **Secretary Toler reported that Mr. Labadie agreed to provide legal services to the Board, with the understanding that attending meetings will be very difficult for him in that he had previously already accepted work from seven (7) other oversight boards. Member Koelling asked if the Board changed any of its special and/or regular meetings dates, would Mr. Labadie be able to attend. Secretary Toler reported that he might be able to attend future meetings if they were not held on Wednesday morning due to a conflict with another Board’s schedule, but that attendance over the next several weeks would be difficult at best. Discussion ensued amongst Board members as to options. Motion was made by Member Keller, seconded by Chair Bennett, to pass a resolution selecting Craig Labadie to provide professional legal services to the Oversight Board, and that the Secretary to the Board is authorized to execute the agreement on behalf of the Board. Resolution 2012-003 passed 6-0-1 (Member Acree absent).**

b. Update on Directors and Errors & Omissions Insurance



Oversight Board of the Successor Agency City of Foster City

Date: April 18, 2012
To: Chair and Members of the Oversight Board
Via: James C. Hardy, City Manager
From: Steve Toler, Assistant City Manager
Subject: Discussion of Effect of Agreements between City of Foster City and former Agency after January 1, 2011

RECOMMENDATION

It is recommended that the Oversight Board have a discussion in terms of the effect of execution of three agreements – Cooperative Services Agreement, Public Improvement Reimbursement Agreement, and Affordable Housing Reimbursement Agreement – between the City of Foster City (City) and the former Foster City Community Development Agency (Agency) executed after January 1, 2011. It is further recommended that, if necessary, the Board formulate specific questions to be asked of legal counsel in anticipation of a future discussion in regards to the affirmation or rejection of those agreements.

EXECUTIVE SUMMARY

During the period between January 1, 2011 and January 31, 2012 (the effective date of dissolution of the former Agency), the City and former Agency entered into three (3) agreements: 1) Cooperative Services Agreement; 2) Public Improvement Reimbursement Agreement; and, 3) Affordable Housing Reimbursement Agreement. Those agreements were entered into for the primary purpose of winding down the affairs of the former Agency's Project Area One project area, which was expected to (and ultimately did) reach its tax increment cap of \$170 million in April 2011. Under the terms of those agreements, the Agency authorized the transfer of various assets in support of those agreements prior to the introduction in the Legislature and/or the eventual approval by the Governor of ABx1 26. All of those transfers occurred on or prior to June 29, 2011. The Board Chair has requested that these agreements and their accompanying asset transfers be discussed amongst the Oversight Board relative to the legislation in determining what actions the Board needs to take in terms of these agreements and their impact on the Recognized Obligation Payment Schedule and the eventual wind-down of the Successor Agency.

BACKGROUND

The three (3) agreements mentioned above were entered into between the City and the former Agency after January 1, 2011. Subsequent to those agreements being executed, and prior to June 29, 2011 (the date ABx1 26 was signed into law by the Governor), the Agency transferred cash assets to the City for purposes of implementing the provisions of those agreements. The three (3) agreements and the amount of funds transferred are briefly discussed below. Copies of each agreement were provided in the agenda packet for the April 10, 2012 Special Meeting of the Oversight Board.

Cooperative Services Agreement ("CSA")

The CSA was executed on April 18, 2011 by resolution of the former Agency and the City. The CSA was established for the purpose of having the City fulfill the Agency's obligations to pay the San Mateo Union High School District the amounts required under the terms of a Stipulated Judgment dated June 27, 1991 with payments to be made through FY 2015-2016. The transfer of cash assets totaling \$2,467,000 was made on April 19, 2011 from tax increment revenues collected as the Agency reached its \$170 million tax increment cap.

Public Improvement Reimbursement Agreement ("PIRA")

The PIRA was executed on February 7, 2011 by resolution of the former Agency and the City. As described in the staff report to those resolutions, the "PIRA would be an agreement between the Agency and the City whereby the Agency would commit financial resources to the City to undertake the 'construction and installation of necessary public infrastructure and facilities and to facilitate the restoration and/or replacement of existing inadequate public facilities'. Projects would be identified that have a direct benefit to the Project Area. Funding would go towards the costs of acquisition of property, planning and design, construction, project management, and administration activities. The funds could be deposited with the City in advance of construction of the listed projects in a restricted fund for such purposes, or transferred to the City on a reimbursement basis as costs are incurred." One of the projects identified in the PIRA was the Synthetic Turf Project at Sea Cloud Park S-4 that would support the initiatives of the original Redevelopment Plan. The PIRA was authorized to an amount not to exceed \$2.9 million.

Operating on good faith based on the execution of the PIRA, the City Council of the City of Foster City approved Capital Improvement Project #615 – Synthetic Turf Fields at Sea Cloud Park S-4 on February 7, 2011, authorizing an appropriation of any and all funds available from the PIRA up to an amount of \$1,536,000. On May 16, 2011, the City Council approved a landscape design contract with Verde Design Inc. for the project design services for the project, a contract that was executed by both parties on June 1, 2011. As of January 31, 2012, a total of \$114,387 had been expended on the contract with Verde. An encumbrance of \$33,400 remains on the contract which will be paid upon completion of the design services, which is expected to be completed by June 30, 2012. The Successor Agency included this remaining balance on the Recognized Obligations Payment Schedule ("ROPS") for the period

1/1/2012 to 6/30/2012 based on the fact that these funds were encumbered under an enforceable obligation and that the City had operated under contractual obligation to the former Agency under the terms of the PIRA to construct those improvements on its behalf.

Initially, an amount totaling \$612,243 was transferred by the Agency to the City on February 27, 2011 based upon existing funds in the Agency's Capital Improvement Funds. When the final tax increment was collected for Project Area One in April 2011, and the books were closed, unrealized gains totaling \$34,692 were available to support the terms of the PIRA, providing a total transfer prior to June 29, 2011 of \$646,935. These funds were deposited with the City with the assumption that the Agency would "advance" these funds to the City in anticipation of a construction contract being awarded on the project. (Note: The City approved a construction contract with Top Grade Construction on January 17, 2012 in an amount allocated to the Sea Cloud Park project of approximately \$1.1 million. That contract was not incorporated on the ROPS as the contract itself was executed after the enactment and subsequent affirmation by the California Supreme Court on ABx1 26.)

As of January 31, 2012, a remaining unencumbered balance of \$499,148 exists in the PIRA fund on the City's books.

Affordable Housing Reimbursement Agreement ("AHRA")

The AHRA was executed on February 22, 2011 by resolution of the former Agency and the City. As described in the staff report to those resolutions, the City and the Agency determined that "It would be prudent and in furtherance of both parties' affordable housing goals for the City and the Agency to enter into an Affordable Housing Reimbursement Agreement pursuant to which the City will undertake certain high priority affordable housing projects to be paid for by a binding pledge of tax increment from the Agency." The agreement allowed for funds to be deposited with the City in advance of production or rehabilitation of affordable housing units in four (4) areas:

1. Pilgrim-Triton Phase I – committing up to \$6.3 million for the development of 60 affordable housing units under the terms of a Development and Disposition Agreement (DDA) with Northwestern Mutual as the developer.
2. New Development / Existing Unit Purchase Program – committing up to \$20.7 million towards such projects as future phases of the Pilgrim-Triton project, funding new development of affordable housing on the City-owned 15-acre site adjacent to the Government Center, and subsidies towards the redevelopment of existing residential properties and/or acquisition of existing housing units.
3. Affordable Housing Rehabilitation Projects – commits up to \$2 million for the rehabilitation of up to 200 existing affordable housing units located in the Metro Center Senior Housing Project, Foster's Landing, or other Agency-owned single- and multi-family housing units.

4. Affordable Housing Rent Subsidy Program – allows for \$1 million to be used to help provide subsidies as deemed necessary to support affordable housing to families in very low-, low- and/or moderate-income categories.

Operating in good faith based upon the terms of that agreement, the Agency transferred funds totaling \$19,072,012 on June 29, 2011. All of these funds came from the tax increment collected on the Project Area One project area. Subsequent to the passage of ABx1 26, the City, acting on behalf of the Agency, expended funds from the AHRA that the Agency determined to be enforceable obligations based upon the terms in the legislation. Through January 31, 2012, the City expended \$105,487 of AHRA funds in obligations that are reflective of the obligations identified under the “Project Area One” list of obligations on the ROPS mentioned above (e.g., HEART dues, Human Investment Project Homeshare and Property Management fees, HOA dues for Sand Harbour South and Emerald Bay, legal professional services from Burke Williams & Sorensen). The AHRA funds generated \$108,021 in investment income in the City’s investment pool, \$39,191 in rental income received from the Agency-owned affordable housing units, and \$5,739 in loan repayments under the 1st Time Homebuyers Loan program. As of January 31, 2012, the balance in the AHRA funds was \$19,119,476.

ANALYSIS

The Board Chair requested that staff prepare this staff report to allow the Oversight Board to review these three (3) agreements relative to the legislation in determining what actions the Board needs to take in terms of these agreements and their impact on the Recognized Obligation Payment Schedule and the eventual wind-down of the Successor Agency.

H&S Code §34167.5 provides that the State “Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city ... that created a redevelopment agency ... and the redevelopment agency. If such an asset transfer did occur during that period and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011 [updated by the California Supreme Court ruling to be February 1, 2012], to the successor agency..... Upon receiving such an order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the redevelopment agency or, on or after October 1, 2011 [updated by the California Supreme Court ruling to be February 1, 2012], to the successor agency....” The State Controller has requested a listing of transfers from the Agency to the City and the City has complied with that request.

It should be noted that the City maintains that the CSA, PIRA and AHRA are valid contracts, yet without any prejudice to any arguments in support of their validity, have included various enforceable obligations on the ROPS. If the State Controller deems

that the transfers made in good faith by the former Agency to the City are invalid and must be returned, the City will consider whether to challenge the legality of such determination by the State. The City acting as Successor Agency is operating under the premise that if the City does opt to challenge the State and a Court rules in favor of the State (or if the City opts not to challenge the State) then those enforceable obligations identified in the ROPS shall first be taken into consideration and those funds should stay with the Successor Agency to liquidate those enforceable obligations rather than being "swept" as unencumbered assets that are to be distributed to the taxing entities as required in H&S Code §34177(d).

Staff would recommend that the Oversight Board consider obtaining legal counsel in regards to two issues: 1) what are the Oversight Board's responsibilities in taking any actions in regards to these transfers in light of the provisions that H&S Code §34167.5 stipulates that the State Controller has the responsibility for adjudicating any transfers between the City and the Agency; 2) to what extent did the California Supreme Court's ruling on the constitutionality of ABx1 26 have in regards to the State's ability to invalidate binding contractual obligations between cities and former agencies that were executed prior to the enacting date of the legislation; and, 3) if the State did have authority to retroactively invalidate such contracts, may the Oversight Board now authorize the City, as successor agency, to reenter such contracts with the City, in its capacity as a municipal corporation pursuant to H&S Code Section 34178(a) which provides in part: a "successor entity wishing to enter or reenter into agreements with the city that formed the redevelopment agency that it is succeeding may do so only upon obtaining the approval of its oversight board."