

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

SPECIAL MEETING

April 26, 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 18, 2012
4. Resolutions for Adoption
 - a. A Resolution Approving the Recognized Obligation Payment Schedule for the Period January 2012 to June 2012
 - i. Updated ROPS based on Board Direction at April 10 and April 18 meetings
 - ii. *Note: Board Members are requested to bring their binders from the April 10 meeting.*
5. Reports
 - a. Opinion from Legal Counsel (Craig Labadie) on Board Questions Relative to the ROPS for the Period January 2012 to June 2012
 - i. *Agenda item recommended to be taken out of order before Item 4a*
6. Old 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
 - b. Update on Directors and Errors & Omissions Insurance

7. New Business

- a. Discussion of Preparation of an Administrative Budget for the Successor Agency for the Period July 2012 to December 2012
 - i. Discussion based upon resolution of administrative budget question in Item 5a
- b. Discussion of Preparation of Recognized Obligation Payment Schedule for the Period July 2012 to December 2012

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 18, 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 Tina Acree, Jim Keller, Linda Koelling, Elizabeth McManus (present #4-9), Rick Wykoff**

Members Absent: **None**

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 called to order at 8:04 a.m.**
2. Public Comment - **None**
3. Minute Approval
 - a. April 10, 2012 – **Motion by Vice-Chair McMillan, Seconded by Member Koelling, approving the April 10, 2012 minutes as submitted. Motion passed 6-0-1 (Member McManus Absent)**
4. Resolutions for Adoption
 - a. A Resolution Approving the Recognized Obligation Payment Schedule for the Period January 2012 to June 2012
 - i. As per the April 10, 2012 meeting, the Board chose to discuss each item on the ROPS and make separate motions for each item. Discussion was held on each item identified below. The motions and direction provided on each item are as follows:

Marlin Cove Project Area

Item	Motion	Made / Second	Vote
O	Approve obligations for Agency Grant, Affordable Housing Subsidy, and Utility Subsidy, to PWM Residential Ventures LLC (acting on behalf of developer MH Podell Company) subject to the County Controller's Audit Firm, Macias Gini & O'Connell (MGO) reversing its finding on Agreed Upon Procedure (AUP) #3 from "No" to "Yes" – Motion Passed	LK / RW	6-1 (RW "no")
D&E	Approve obligations to Burke Williams & Sorensen and Fraser & Associates as presented – Motion Failed	JK / MM	1-6 (All but RW voting "no")
D	Approve obligation to Burke Williams & Sorensen, but terminate funding for the agreement effective June 30, 2012 – Motion Passed	LK / TA	6-1 (RW "no")
E	Approve obligation to Fraser & Associates but terminate funding for the agreement effective June 30, 2012 – Motion Passed	LK / LM	7-0
P	Approve obligation for Independent Auditing Services with City's new Independent Auditing Firm, Vavrinek Trine Day & Co, LLP, with discretion for Staff to determine if the funds are required to be spent based upon decisions by the Department of Finance or the County Controller if the preparation and an audit of Successor Agency financial statements is required – Motion Passed	LM / LK	7-0
Q	Approve obligation for Director fees to the former Agency Board members in January 2012 – Motion Passed	LM / LK	6-1 (RW "no")
R	Remove obligation to County of San Mateo for property tax administration fees in light of clarification from County Controller that such fees will be deducted prior to the distribution of tax increment to fund enforceable obligations – Motion Passed	JK / LM	7-0

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

Notes:

- In regards to Item O, Member Wykoff voted "no" as he believed the Oversight Board has the authority to approve the obligation

irrespective of the findings of the County Controllers' Audit Firm's findings, which he believes are incorrect.

- In regards to Items D&E taken as one motion, the motion failed as the Board wished to consider each item separately.
- In regards to Item D, Member Wykoff voted "no" as he believed the obligation should not be terminated.
- In regards to Item D, the Board indicated to Staff that it could propose a successor contract for legal services as part of the administrative budget, subject to clarification from legal counsel on whether or not professional services contracts should be included in the administrative budget rather than on the ROPS.

Hillsdale/Gull Project Area

Item	Motion	Made / Second	Vote
S	Approve obligation for Affordable Housing Subsidy to Prometheus Development (acting on behalf of developer Miramar Apartments LLP) subject to the County Controller's Audit Firm, MGO, reversing its finding on AUP #3 from "No" to "Yes" – Motion Passed	JK / MM	7-0
D	Approve obligation to Burke Williams & Sorensen, but terminate funding for the agreement effective June 30, 2012 – Motion Passed	JK / TA	7-0
E	Approve obligation to Fraser & Associates but terminate funding for the agreement effective June 30, 2012 – Motion Passed	JK / TA	7-0
P	Approve obligation for Independent Auditing Services with City's new Independent Auditing Firm, Vavrinek Trine Day & Co, LLP, with discretion to Staff to determined if the funds are required to be spent based upon decisions by the Department of Finance, County Controller, or the profession if an audit of Successor Agency financial statements is required – Motion Passed	JK / TA	7-0
Q	Approve obligation for Director fees to the former Agency Board members in January 2012 – Motion Passed	JK / TA	6-1 (RW "no")

Item	Motion	Made / Second	Vote
R	Remove obligation to County of San Mateo for property tax administration fees in light of clarification from County Controller that such fees will be deducted prior to the distribution of tax increment to fund enforceable obligations – Motion Passed	JK / TA	7-0

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

All Project Areas (Project Area One, Marlin Cove, and Hillsdale/Gull)

Item	Motion	Made / Second	Vote
N	Approve obligation to City of Foster City for administrative support services through June 30, 2012, rescinding prior motion on April 10 to table this item for Project Area One – Motion Passed	JK / TA	7-0

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

Project Area One (Note: the following items were reconsidered and prior motions made on April 10 in regards to these items were rescinded based upon these new motions)

Item	Motion	Made / Second	Vote
B	Approve obligation for Affordable Housing Subsidy to Northwestern Mutual (substituting the payee name for Sares-Regis) subject to the County Controller’s Audit Firm, Macias Gini & O’Connell (MGO) reversing its finding on Agreed Upon Procedure (AUP) #3 from “No” to “Yes” – Motion Passed	RW / LK	7-0
M	Approve obligation to Verde Design Inc for project design services for the Synthetic Turf Capital Improvement Project payable from funds in the Public Improvements Reimbursement Agreement (PIRA) with the City – Motion Passed	LM / LK	5-2 (DB and JK “no”)

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

Notes:

- **In regards to Item M, Chair Bennett and Member Keller voted “no” in that they believed approving the obligation with Verde Design**

without advice from legal counsel in terms of the validity of the PIRA to be premature.

- Chair Bennett recapped items on the ROPS tabled subject to response from legal counsel: Item A – SMUHSD, and G – HEART. Items M – Verde, and N – City of Foster City were also subject to response from legal counsel, however those items were approved at this meeting.
- During the discussion of the ROPS, it was learned that a binder of information was provided to four (4) members of the Oversight Board by Barbara Christensen of the San Mateo Community College District. Discussion ensued. The Board requested that Staff contact Ms. Christensen to request copies for all members be provided to the Secretary to the Board by April 23, 2012 for distribution to the Board, and that the Chair directly contact the SMCCCD Chancellor with the Board's concern over information and/or communications made by his staff to a majority of the Board, but less than the full membership of the Board.

5. Reports - **None**

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 – **Tabled to the next meeting, which will be April 26 (see below #8)**

7. New Business

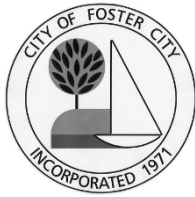
- a. Discussion of Effect of Agreements Between City of Foster City and former Agency after January 1, 2011
 - i. Cooperative Services Agreement
 - ii. Public Improvement Reimbursement Agreement
 - iii. Affordable Housing Reimbursement Agreement
- b. **Mr. Toler provided an overview of the staff report and of each of the three (3) agreements listed above. No action was taken and this item will be continued to the next Special Meeting of April 26, 2012.**

8. Member Statements and Requests

- a. **Mr. Toler reported to the Board that Craig Labadie is working on the questions that the Board had for him at their April 10 meeting and expects to have an answer in writing to the Board by April 23. He also indicated that he would be available the morning of April 26, the afternoon of April 27, or the morning of April 30. The Board decided to reschedule their Special**

Meeting from April 25 to April 26 at 8 a.m. in order to have Mr. Labadie present at the Board meeting and to report back on the items previously requested. It was also reported that Mr. Labadie is available on the 2nd Wednesday of the month to attend the Board's Regular Meetings.

9. Adjournment – **Meeting adjourned at 10:02 a.m.**



Oversight Board of the Successor Agency City of Foster City

Date: April 26, 2012
To: Chair and Members of the Oversight Board
Via: James C. Hardy, City Manager
From: Steve Toler, Assistant City Manager
Subject: A Resolution Approving the Recognized Obligation Payment Schedule for the Period January 2012 to June 2012

RECOMMENDATION

It is recommended that the Oversight Board adopt the attached resolution approving the Recognized Obligation Payment Schedule (ROPS) for the Period January 1, 2012 to June 30, 2012.

EXECUTIVE SUMMARY

The Oversight Board has considered the draft ROPS at its April 10 and April 18 meetings, and has approved motions with respect to each line item on the draft ROPS presented at those meetings. Furthermore, the Board has requested clarification on various matters from Craig Labadie, Legal Counsel to the Oversight Board, in preparation for final adoption of the ROPS. Mr. Labadie will provide answers to the Board's questions at this meeting.

Further, it was requested that Staff discuss the findings from the Agreed Upon Procedures (AUP) provided to the Board by the County Controller's audit firm, Macias Gini and O'Connell (MG&O), in regards to the items marked "No" under AUP #3. Staff hopes to have final answers from the audit firm in time for this meeting and will present those answers to the Board for their consideration.

Based upon the input provided by legal counsel and the answers to the questions on the AUP Report by MG&O, staff would recommend that the Oversight Board adopt the attached resolution approving the ROPS for the Period January 1, 2012 to June 30, 2012. Upon adoption of the resolution, a copy of the resolution and the ROPS will be submitted to the County Controller's Office and the State Department of Finance.

Attachments:

- Resolution
- Revised Obligation Payment Schedule for the Period January 1, 2012 to June 30, 2012

RESOLUTION NO. _____

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY CITY OF FOSTER CITY APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JANUARY 1, 2012 TO JUNE 30, 2012

SUCCESSOR AGENCY CITY OF FOSTER CITY

WHEREAS, the Successor Agency has prepared a draft Recognized Obligation Payment Schedule for the period January 1, 2012 to June 30, 2012 (ROPS) pursuant to California Health & Safety Code (H&S Code) §34177 that was submitted to the County Controller on February 29, 2012; and,

WHEREAS, the County Controller hired the independent auditing firm of Macias Gini & O'Connell for purposes of performed an agreed-upon procedures engagement pursuant to H&S Code §34182, of which their report was provided to the Oversight Board members and the Successor Agency on April 9, 2012; and,

WHEREAS, the Oversight Board was presented with a copy of the ROPS at its April 5, 2012 meeting and subsequently agendized the discussion of the ROPS at its April 10 and April 18 meetings; and,

WHEREAS, the Oversight Board has reviewed each line item on the ROPS in detail and pass a series of motions at its April 10 and April 18 meetings in regards to each item on the ROPS; and,

WHEREAS, Successor Agency staff transmitted a draft ROPS to the County Controller on April 13, 2012 in compliance with the deadlines required under the H&S Code indicating that the Board was considering the adoption of the ROPS and that it would transmit its final approved ROPS when the Board had the information and time necessary in order to finalize its findings on the obligations listed on the ROPS; and,

WHEREAS, the Oversight Board requested information from legal counsel in regards to various items on the ROPS and received a report back from legal counsel at its April 26, 2012 meeting prior to the adoption of this resolution; and,

WHEREAS, the attached ROPS is reflective of the changes made to the original ROPS based upon Board deliberation at its April 10, April 18 and April 26 meetings.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency City of Foster City that the Recognized Obligation Payment Schedule for the Period January 1, 2012 to June 30, 2012, attached hereto and incorporated herein, is hereby approved.

BE IT FURTHER RESOLVED that the Secretary is instructed to transmit a copy of this resolution and the approved ROPS to the San Mateo County Controller's Office and the California Department of Finance.

PASSED AND ADOPTED as a resolution of the Oversight Board of the Successor Agency City of Foster City at the Special Meeting held on the 26th day of April, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DICK W. BENNETT, CHAIRPERSON

ATTEST:

STEVE TOLER, SECRETARY

Successor Agency City of Foster City
 Recognized Obligations Payment Schedule
 For the period January 1, 2012 to June 30, 2012

Project Area: Project Area One
Recommended for Approval by Oversight Board 4/26/2012

The following schedule has been prepared in accordance with California Health and Safety Code §34177

Project Name	Payee	Description	H&S Code Compliance - Enforceable Obligation	Source of Funds	Obligated Payments						Total January 2012 to June 2012	Total Outstanding Obligation for Multi-Year Obligations Beyond This period	Footnotes
					January 2012	February 2012	March 2012	April 2012	May 2012	June 2012			
Project Area One	San Mateo Union High School District	Obligations under the Stipulated Judgment and Mutual Release between the Agency and SMUHSD dated June 27, 1991, payable through June 2016.	34171(d)(1)(D)	FC-CSA	-	-	-	-	-	475,000	475,000	1,992,000	(A)
Project Area One	Northwestern Mutual	Affordable housing subsidy under terms of the Owner Participation Agreement (OPA) for Pilgrim-Triton Project	34171(d)(1)(E)	FC-AHRA	-	-	-	-	-	-	-	6,300,000	(B)
Project Area One	Human Investment Project	Homeshare Program funding for LMI individuals under contract	34167(d)(6)	FC-AHRA	-	-	6,750	-	-	6,750	13,500	-	(B)
Project Area One	Burke, Williams & Sorensen	Legal counsel on retainer re affordable housing initiatives, administration and governance issues, via professional services agreement	34167(d)(6)	FC-AHRA	3,000	2,000	2,000	2,000	2,000	2,000	13,000	-	(B)
Project Area One	Fraser & Associates	Financial consulting services via professional services agreement	34167(d)(6)	FC-AHRA	1,500	-	1,500	-	-	1,500	4,500	-	(B)
Project Area One	Metropolitan Planning Group	Consulting services on Below-Market-Rate Housing matters, under professional services agreement	34167(d)(6)	FC-AHRA	1,500	1,500	1,500	1,500	1,500	1,500	9,000	-	(B)
Project Area One	Housing Endowment and Regional Trust of San Mateo County	Membership contract for regional construction, rehabilitation, acquisition of affordable housing and placement services to LMI residents and seniors	34167(d)(6)	FC-AHRA	-	-	-	-	-	-	-	12,500	(B)
Project Area One	Angel Landscaping	Landscape maintenance agreement on Agency affordable housing units	34167(d)(6)	FC-AHRA	1,000	1,000	1,000	1,000	1,000	1,000	6,000	-	(B)
Project Area One	Human Investment Project	Property Management Services, including incidental maintenance / repair expenses, associated with affordable housing existing units under contract	34167(d)(6)	FC-AHRA	3,000	3,000	3,000	3,000	3,000	3,000	18,000	-	(B)
Project Area One	Sand Harbour South	Homeowners' Association Dues for affordable housing existing unit at 920 Beach Park Blvd #37	34167(d)(6)	FC-AHRA	500	500	500	500	500	500	3,000	-	(B)
Project Area One	Emerald Bay of Foster City	Homeowners' Association Dues for affordable housing existing unit at 705 Emerald Bay	34167(d)(6)	FC-AHRA	300	300	300	300	300	300	1,800	-	(B)

Successor Agency City of Foster City
 Recognized Obligations Payment Schedule
 For the period January 1, 2012 to June 30, 2012

Project Area: Project Area One
Recommended for Approval by Oversight Board 4/26/2012

The following schedule has been prepared in accordance with California Health and Safety Code §34177

Project Name	Payee	Description	H&S Code Compliance - Enforceable Obligation	Source of Funds	Obligated Payments						Total January 2012 to June 2012	Total Outstanding Obligation for Multi-Year Obligations Beyond This period	Footnotes
					January 2012	February 2012	March 2012	April 2012	May 2012	June 2012			
Project Area One	Terminix International	Pest control services under maintenance agreement for affordable housing existing units	34167(d)(6)	FC-AHRA	250	250	250	250	250	250	1,500	-	(B)
Project Area One	Verde Design Inc.	Project design services for Synthetic Turf Capital Improvement Project at Sea Cloud Park S-3 and S-4	34171(d)(1)(E)	FC-PIRA	-	-	-	-	-	33,400	33,400	-	(C)
Project Area One	City of Foster City	Administrative support services for affordable housing programs administration, accounting, financial reporting, and contract administration.	34167(d)(6)	FC-AHRA	4,920	4,920	4,920	4,920	4,920	4,920	29,520	-	(B)
				Totals	15,970	13,470	21,720	13,470	13,470	530,120	608,220	8,304,500	
FOOTNOTE:													
(A) - This obligation is payable under the terms of a Cooperative Services Agreement between the Agency and the City dated April 18, 2011. While the City maintains that this agreement is a valid contract, and without prejudice to the arguments of its validity, this enforceable obligation of the Agency that has been transferred to the City under that agreement is included in the ROPS.													
(B) - These obligations are payable under the terms of an Affordable Housing Reimbursement Agreement between the Agency and the City dated February 22, 2011. While the City maintains that this agreement is a valid contract, and without prejudice to the arguments of its validity, these enforceable obligations of the Agency that have been transferred to the City under that agreement is included in the ROPS.													
(C) - This obligation is payable under the terms of a Public Improvements Reimbursement Agreement between the Agency and the City dated February 7, 2011. While the City maintains that this agreement is a valid contract, and without prejudice to the arguments of its validity, this enforceable obligation of the Agency that has been transferred to the City under that agreement is included in the ROPS.													
SOURCE OF FUNDS:													
FC-CSA	Foster City Cooperative Services Agreement Funds, which are currently on-hand from net available tax increment previously collected. No further tax increment is necessary.												
FC-AHRA	Foster City Affordable Housing Reimbursement Agreement Funds, which are currently on-hand from net available tax increment previously collected. No further tax increment is necessary.												
FC-PIRA	Foster City Public Improvements Reimbursement Agreement Funds, which are currently on-hand from net available tax increment previously collected. No further tax increment is necessary.												

Successor Agency City of Foster City
 Recognized Obligations Payment Schedule
 For the period January 1, 2012 to June 30, 2012

Project Area: Marlin Cove
 Recommended for Approval by Oversight Board 4/26/2012

The following schedule has been prepared in accordance with California Health and Safety Code §34177

Project Name	Payee	Description	H&S Code Compliance - Enforceable Obligation	Source of Funds	Obligated Payments						Total January 2012 to June 2012	Total Outstanding Obligation for Multi-Year Obligations Beyond This period
					January 2012	February 2012	March 2012	April 2012	May 2012	June 2012		
Marlin Cove	PWM Residential Ventures LLC	Agency Grant to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through May 2015	34171(d)(1)(E)	LMIHF	-	-	-	-	-	110,000	110,000	330,000
Marlin Cove	PWM Residential Ventures LLC	Affordable Housing Subsidy to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through January 2029	34171(d)(1)(E)	LMIHF	-	-	-	-	-	173,000	173,000	3,465,000
Marlin Cove	PWM Residential Ventures LLC	Utility Subsidy to Developer per the terms of the Disposition and Development Agreement for the Marlin Cove Project through January 2029	34171(d)(1)(E)	LMIHF	-	-	-	-	-	41,000	41,000	827,000
Marlin Cove	Burke, Williams & Sorensen	Legal counsel on retainer re affordable housing initiatives, administration and governance issues, via professional services agreement	34171(d)(1)(F)	LMIHF	500	500	1,000	500	500	1,000	4,000	Note 1
Marlin Cove	Fraser & Associates	Financial consulting services via professional services agreement	34171(d)(1)(F)	RPTTF	250	-	500	-	-	500	1,250	Note 1
Marlin Cove	Independent Auditors	Independent accountant and auditing services (subject to RFP process in January 2012).	34171(d)(1)(F)	RPTTF	-	-	-	3,000	-	-	3,000	Note 1
Marlin Cove	City of Foster City	Administrative support services such as accounting, financial reporting, affordable housing program administration and Development and Disposition Agreement contract administration.	34167(d)(6)	RPTTF	2,000	2,000	2,000	2,000	2,000	2,000	12,000	Note 1
Marlin Cove	City of Foster City	Director fees to Agency Board members on a per-meeting basis	34171(d)(1)(F)	RPTTF	450	-	-	-	-	-	450	-
					3,200	2,500	3,500	5,500	2,500	327,500	344,700	
FOOTNOTE:												
Note 1	These items will be incorporated into the Administrative Budget in FY 2012-2013 and beyond.											
SOURCE OF FUNDS:												
RPTTF	Redevelopment Property Tax Trust Fund											
LMIHF	Low and Moderate Income Housing Fund											

Successor Agency City of Foster City
 Recognized Obligations Payment Schedule
 For the period January 1, 2012 to June 30, 2012

Project Area: Hillsdale / Gull
 Recommended for Approval by Oversight Board 4/26/2012

The following schedule has been prepared in accordance with California Health and Safety Code §34177

Project Name	Payee	Description	H&S Code Compliance - Enforceable Obligation	Source of Funds	Obligated Payments						Total January 2012 to June 2012	Total Outstanding Obligation for Multi-Year Obligations Beyond This period
					January 2012	February 2012	March 2012	April 2012	May 2012	June 2012		
Hillsdale / Gull	Prometheus Development	Affordable Housing Subsidy to Developer per the terms of the Disposition and Development Agreement for the Hillsdale/Gull Project (aka "Miramar Apartments") through July 2017	34171(d)(1)(E)	LMIHF	-	-	-	-	-	123,000	123,000	647,000
Hillsdale / Gull	Burke, Williams & Sorensen	Legal counsel on retainer re affordable housing initiatives, administration and governance issues, via professional services agreement	34171(d)(1)(F)	LMIHF	500	500	1,000	500	500	1,000	4,000	Note 1
Hillsdale / Gull	Fraser & Associates	Financial consulting services via professional services agreement	34171(d)(1)(F)	RPTTF	250	-	500	-	-	500	1,250	Note 1
Hillsdale / Gull	Independent Auditors	Independent accountant and auditing services (subject to RFP process in January 2012).	34171(d)(1)(F)	RPTTF	-	-	-	1,400	-	-	1,400	Note 1
Hillsdale / Gull	City of Foster City	Administrative support services such as accounting, financial reporting, affordable housing program administration and Disposition and Development Agreement contract administration.	34167(d)(6)	RPTTF	2,000	2,000	2,000	2,000	2,000	2,000	12,000	Note 1
Hillsdale / Gull	City of Foster City	Director fees to Agency Board members on a per-meeting basis	34171(d)(1)(F)	RPTTF	450	-	-	-	-	-	450	-
					3,200	2,500	3,500	3,900	2,500	126,500	142,100	
FOOTNOTE:												
Note 1	These items will be incorporated into the Administrative Budget in FY 2012-2013 and beyond.											
SOURCE OF FUNDS:												
RPTTF	Redevelopment Property Tax Trust Fund											
LMIHF	Low and Moderate Income Housing Fund											



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."