# MINUTES OF THE OVERSIGHT BOARD MEETING OCTOBER 10, 2012

## 1. OPENING

#### 1.1. CALL TO ORDER

# 1.2. PLEDGE OF ALLEGIANCE TO THE FLAG

Boardmember Phillip E. Yarbrough

### 1.3. ROLL CALL

PRESENT – Buttress, Yarbrough, Schulze, Davert, Christensen, Cavecche (Boardmember Remland arrived at 4:15 p.m.)

ABSENT – All Present

## 2. PUBLIC COMMENTS

None

#### 3. CONSENT CALENDAR

3.1 Oversight Board Minutes, Regular Meeting of August 15, 2012 and October 3, 2012.

**Recommended Action: Approve.** 

MOTION: Yarbrough SECOND: Davert

AYES: Buttress, Yarbrough, Schulze, Davert, Christensen, Cavecche

ABSENT: Remland

Action: Moved to approve minutes of the August 15, 2012 and the October 3, 2012 meetings of the Oversight Board.

## 4. ADMINISTRATIVE REPORTS

**4.1. Resolution No. OB-0011** – A Resolution of the Oversight Board of the Successor Agency to the Orange Redevelopment Agency approving the Due Diligence Review of the Low and Moderate Income Housing Fund conducted pursuant to Health and Safety Code section 34179.5, subject to certain adjustments and taking certain other actions in connection therewith.

Lisa Kim reported that this meeting is a follow-up to the October 3<sup>rd</sup> meeting at which time the results of the Housing DDR Report was presented. The action before the Oversight Board is formal approval of the Housing DDR with the adjustments and additional information is included in the staff report. This action satisfies the AB 1484 requirement for approval of the Housing DDR which is due to the state by October 15, 2012.

Boardmember Yarbrough asked if more items had been taken off the enforceable obligation schedule and asked if there is a trend in what is being accepted or rejected as an enforceable obligation.

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Ms. Kim stated that this is a review of low/moderate income housing funds and includes the amounts to be remitted to the County Auditor Controller and the balance that is available. Regarding a trend, Ms. Kim stated that there is mixed reaction, and nothing is consistent. She stated that the City of Orange staff continues to monitor our responsibilities, and the only item in dispute is the Serrano Woods project.

#### **Recommended Action:**

- 1. Approve Resolution No. OB-0011;
- 2. Authorize the Successor Agency to retain those amounts identified in subparagraph (B) to (E), inclusive of paragraph (5) of subdivision (c) of Health and Safety code Section 34179.5 as documented in the Due Diligence Review as Restricted Assets;
- 3. Authorize the adjustment to delete the amount of \$7,145,234 (amount listed on Page 10 of the LSL Report) and remit the resulting amount of \$12,427,921.49 to the County Auditor-Controller pursuant to Health and Safety Code section 34179.6(c); and,
- 4. Authorize the Executive Director to transmit the DDR with certain adjustments to the Department of Finance, State Controller's Office and County Auditor Controller.

MOTION: Yarbrough SECOND: Buttress

AYES: Buttress, Yarbrough, Schulze, Davert, Christensen, Cavecche

ABSENT: Remland

Action: Moved to approve Resolution OB-0011; and authorize the Successor Agency to retain those amounts identified in subparagraph (B) to (E), inclusive of paragraph (5) of subdivision (c) of Health and Safety code Section 34179.5 as documented in the Due Diligence Review as Restricted Assets; and authorize the adjustment to delete the amount of \$7,145,234 (amount listed on Page 10 of the LSL Report) and remit the resulting amount of \$12,427,921.49 to the County Auditor-Controller pursuant to Health and Safety Code section 34179.6(c); and authorize the Executive Director to transmit the DDR with certain adjustments to the Department of Finance, State Controller's Office and County Auditor Controller.

**4.2. Resolution No. OB-0012** – A Resolution of the Oversight Board of the Successor Agency approving Amendment No. 2 to Cooperative Agreement No. C-9-0243 between the Orange County Transportation Authority and City of Orange and Successor Agency to the Orange Redevelopment Agency for parking capacity at Orange Santa Fe Depot.

Barbara Messick reported that the former Orange Redevelopment Agency entered into a Cooperative Agreement with OCTA to undertake studies related to design of the Metrolink Parking Structure project. This Amendment No. 2 provides for a time extension to the Cooperative Agreement in order to complete work associated with parking structure design since it was disallowed by the DOF. If the Cooperative Agreement is not amended, OCTA funds cannot be used to complete the design. Therefore, to continue work on the project, the agreement needs to be extended.

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Boardmember Yarbrough asked if staff felt the DOF would maintain that this is not an enforceable obligation.

Barbara Messick stated that a Meet and Confer is scheduled at which time this will be discussed and staff is hopeful that it will be an enforceable obligation. If this is not amended, then OCTA funds cannot be used for the design of the parking structure.

Vice Chair Buttress abstained due to Rule 20A pertaining to the underground utility district.

Chair Cavecche abstained due to her work on the OCTA Board.

#### **Recommended Action:**

- 1. Approve Resolution No. OB-0012; and
- 2. Authorize the Chairperson of the Successor Agency to execute the Amendment.

MOTION: Davert SECOND: Christensen

AYES: Yarbrough, Schulze, Davert, Christensen

ABSTAIN: Buttress, Cavecche

ABSENT: Remland

Action: Moved to approve Resolution No. OB-0012; and authorize the Chairperson of the Successor Agency to execute the Amendment.

**4.3.** Resolution No. OB-0013— A Resolution of the Oversight Board of the Successor Agency approving a Contract between the Successor Agency to the Orange Redevelopment Agency and Nieves Landscape, Inc. to provide Landscape Maintenance Services for Successor Agency Properties.

Barbara Messick reported that this is a contract pertaining to existing Successor Agency properties; the amount shall not to exceed \$12,000.

### **Recommended Action:**

- 1. Approve Resolution No. OB-0013; and
- 2. Authorize the Chairperson of the Successor Agency to execute the Contract.

MOTION: Buttress SECOND: Schulze

AYES: Buttress, Yarbrough, Schulze, Remland, Davert, Christensen, Cavecche

Action: Moved to approve Resolution No. OB-0013; and with amended language as stated, authorize the Chairperson of the Successor Agency to execute the contract.

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**4.4.** Verbal Report from Successor Agency General Counsel summarizing pending litigation relating to Assembly Bills 26 and 1484, and information about use of bond proceeds to defease outstanding bonds.

General Counsel Wayne Winthers provided a verbal report of pending litigation across the state regarding Assembly Bills X1 26 and 1484 summarized by Special Counsel Kane, Ballmer, Berkman.

There are currently 30 lawsuits pertaining to every aspect Assembly Bill 1484 and X1 26, including payment penalties, DDR, claw-back provisions, and various constitutional challenges. The League of California Cities is representing several cities regarding the constitutional legality of the claw-back provision. The City of Orange has authorized a lawsuit to be filed against the state regarding the Serrano Woods Project, and will also challenge the claw-back provisions.

As a follow up to the earlier discussion, General Counsel advised the Board that the DOF has been consistent in denying obligations based on loan commitment letters prior to the June date.

Finance Director Rich Jacobs gave an overview about use of bond proceeds and defeasing outstanding bonds. Mr. Jacobs reported that Assembly Bill 1484 allows for defeasing of bonds only if proceeds cannot be used for the intended purpose. In our case, the former RDA has three outstanding bonds including: 1997 tax allocation bonds, 2003 tax allocation bond and 2008 tax allocation bonds. There are approximately \$8.8 million of unspent 2008 bond proceeds. If the 8.8 million cannot be spent for the intended purpose then proceeds could be used to defease the bonds. This amount would be place in an escrow account until the call date.

Recommended Action: Receive and file.

Action: Received and filed

## 5. FUTURE AGENDA ITEMS

- 5.1. Upcoming agenda items by Successor Agency staff
  - ROPS3 Determination Letter
  - Request for a Meet and Confer
- **5.2.** Other items as directed by the Oversight Board.

## 6. CLOSED SESSION

None

## 7. ADJOURNMENT

The Oversight Board of the Successor Agency to the Orange Redevelopment Agency adjourned at 4:31 p.m. to next scheduled meeting at a date uncertain to be scheduled by the Successor Agency staff liaison.