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>> Mayor Reed: Good morning, I'd like to call the meeting to order. This is the oversight board for the Successor Agency of the San José Redevelopment Agency for December 13th. We don't have any changes to the agenda to discuss. The first item is the approval closed session report, which we have none. Minutes of November 8th. Motion to approve, on the motion, all in favor, opposed, none opposed, so that's approved. I have nothing on the consent calendar. So we will go to item scheduled for actions or discussion. Starting with a discussion of the Successor Agency financials. Item 6.1.

>> Arn Andrews: Thank you, Arn Andrews, the acting assistant director of finance. We thought it would be a good opportunity, with so many new board members, to give an overview first of the financial statement, but then also what's embedded behind those financial statements, including the amount of indebtedness associated with the Successor Agency. As you can see, from this slide on as of June 30th, 2012, the Successor Agency was unique in that it was an entity that came into existence with roughly $2 billion in negative net assets. The reason for this is primarily due to approximately $2.4 billion in long term outstanding liabilities. You can see from this slide, comprised within those liabilities is primarily $1.7 billion in senior tax allocation bonds. In addition, we have about $94 million in junior variable rate tax allocation bonds. And then also embedded are various elements including convention center indebtedness, the 20014th street garage indebtedness HUD loans and ERAF loans. In addition to the debt associated with the 80% program, we also have approximately $330 million outstanding in debt associated with the 20% housing program. So those two entities combined, you can see total approximately $2.2 billion in outstanding indebtedness. What all of this equates to on an annual basis you can see on this slide here and it shows everything combined. And we're not even talking about unsecured creditors here. We are talking about bonded indebtedness. Everything combined equates to about $180 million a year in outstanding debt payments and you can also see that the debt schedule doesn't really start to taper off in any significant way until approximately 2023. And you can also see from this slide, if you just look at what our primary source of revenues are to defease all of this indebtedness is distributions from the RPTTF. You can see for 2012-13 it is anticipated that the distribution will be approximately $170 million. So you can see that clearly we are a challenged entity. We have annual debt service payments that are in excess of what we currently anticipate bringing in from tax increment. And this challenge is reflected in what's referred to as our insufficiency of funds report. You can see for the last two reporting periods we are an entity that continues to show an insufficiency of

funds. For the ROPS 1-2 period it was approximately $18 million in an insufficiency, and for the current ROPS 3 period you can see that we're still $5.4 million shy of the funding needed for the ROPS 3 period. It's important to note that embedded in the indebtedness that we just spoke to, there is two unique components. There are two variable rate components to the debt structure associated with the Successor Agency. One is on the 80% side and that is with J.P. Morgan, and it is a letter of credit supporting approximately $94 million in variable rate debt. And there's an expiration on that letter of credit coming up this March 1st of 2013. In addition, there's a variable rate component associated with the housing side and that's a private placement with Wells Fargo and that supports approximately $89 million in bonds and they have an option to tender coming up this April, 2013. The reason I highlight these two variable rate components is because their construct is unique in that both of them are what's known as due and payable. There is not a term-out provision. So for instance with the J.P. Morgan letter of credit any failure to renew or replace those LOCs will make the full $94 million due and payable. So the previous slide where I showed annual debt service in excess of about $180 million, if for any reason we were unable to renew or replace you would add another $94 million on top of that. The way the pledge works, all moneys after senior obligations are legally pledged to pay J.P. Morgan in the event that it becomes a due and payable. In addition if it does become due and payable it will occur at a default rate of 11.5% compounding on any outstanding balance until completely paid. So until we have enough RPTTF funds to not only defease the senior obligations I showed in the previous slide you would have to use every remaining moneys to pay $94 million per annum and to the extent you can't pay all of the $94 million, it would compound at 11.5%. In addition to the J.P. Morgan component, we also have the variable rate component I mentioned with Wells Fargo. And I highlight Wells Fargo because we're also in a unique situation there now. Because of the Moody's down grades that were triggered during the dissolution process in this state and specifically to our entity that triggered what's known as a special termination event. And under the special termination event they had the option to create their indebtedness due and payable also the $94 million I referred to. Working in our relationship with them, we were able to get them to do what's known as forbear their rights, and so we are currently in a forbearance period with them through April 29th. April 29th coincides exactly when they're able to tender the private placement if they choose to. We are in negotiations with them also but very similar the J.P. Morgan construct. In a situation we were unable to renew that would become a due and payable obligation. There is a unique part of the continuing covenant with Wells Fargo which back when this was done in 2010 no one ever contemplated dissolution. But it has a significant consequence for this entity because of the wording that's in there. And the continuing covenant agreement does not allow 20% moneys to be what we've been referring to as swept to the 80% slide which the current legislation does contemplate. We are unable to do that without getting written approval. Once again working our relationship with them, we have gotten written approval to sweep what we estimate could be residual moneys from the 20% side to help offset indebtedness on the 80% side. But that will probably be a discussion point in the renewal process, and I can't guarantee that it is something that could continue in the future. I just walked through what is clearly a construct of a challenged organization. And I think it's important to highlight that we also have continuing head winds. The chart before you now shows the current percent roll growth for this entity. I think people might be surprised to see because throughout most of the other areas of the county we've seen some positive improvement. And I think it's important to highlight for this entity that we have not seen that. And as a matter of fact in the last two months we have scene a significant decline in roll growth. Grant Ed these numbers are very variable month to month but I think it's important to notify the board that currently the trend we're seeing is not a positive trend. We're currently working with our consultants to go through the appeals. We believe a lot of this is related to appeals basically working against us. But we're digging into that to try to get a better understanding of why, in the last two months, we saw this drop of 1.52%. And I highlight this because on the previous slide I showed you know that up until 2023, we pretty much have steady payments in excess of $180 million. We currently have estimated RPTTF funds coming in of $170 million. To the extent we do not see property tax growth, that will be another challenge for this entity. With that I'm happy to take any questions.

>> Mayor Reed: Thank you, Arn. I had a couple of comments to add to the last slide, percent roll growth. There are some things that we can do to deal with that and it is certainly better to grow the roll than to have the roll shrink. And just so the board understands, we have about $1 billion of new housing construction underway in various forms in North San José that we eventually will hit the tax rolls. Some of it is completed and occupied, most of it is not yet. And there's always a lag on getting on the tax rolls. So that was $1 billion of special work that the council and staff did two years ago, to facilitate that, and then we have launched another effort to get another $1 billion of projects approved in the next six months which of course means construction period. Eventually it will get on the tax rolls. So the city council is being very aggressive at trying to grow the tax rolls, which will change

this slide, we hope, much for the better. So the council's very aware of the need to have economic development because of this. And other reasons. So we are working on that. This doesn't look very good. I did have one question on this slide. Is this a cumulative number or an annualized rate as of that time?

>> Arn Andrews: It's an annualized rate from the previous year's roll.

>> Mayor Reed: So when you get to the end of the year, and you've had some up and some down, you average that out, so would you sort of average that out to see where we are relative to getting to the end of the year? So you got 2% to the good and 3 or 4% to the bad?

>> Arn Andrews: And let me just clarify the 2%, if I may. The 2% is the starting point, and that's the CPI that's embedded in the beginning of the roll growth. It is assumed we would have the 2% CPI. So as you see, as we start to move into the negative, it actually means that not only have we eroded the 2% CPI that's built in at the beginning, it means we've actually moved beyond that. So when you look at the last two months of November and December and we see down 1.52%, that means it's down 3.52%.

>> Mayor Reed: We're also seeing a lot of development activity, lot of new activity around old buildings. So hopefully these appeals will go away, as the -- as values start coming back up.

>> Arn Andrews: And historically we do have a strong retention on appeals. We historically range between 95 and 98% retention. That's why we're currently working with our consultant to look at how the current appeals process has been going. Because it appears to be happening at a retention rate below our historic norm, and we're trying get a better understanding of that.

>> Mayor Reed: Emily.

>> Emily Harrison: I fully understand the focus on the insufficiency of funds with this report but if I might I had some questions about the audited financials themselves.

>> Arn Andrews: Great and to the extent you ask questions, I might also utilize Abe, since he was the chief financial officer compiling the financials. So depending on the nature of the question I might ask for assistance.

>> Emily Harrison: And I have questions that I won't use our time this morning on, but mine tend to center around issues of reclassifications of properties. So that the book value was reduced in some cases by 50% or more. And the reason I'm focusing on that is basically that's our portfolio as a Successor Agency oversight board. So I'd like to understand a little bit more. On page 6 of the financial statements --

>> Arn Andrews: And are you on the SARA financial statements or the previous --

>> Emily Harrison: I'm on the Redevelopment Agency successor. Taking the book value down from 50 million to about 27 million, there's no detail as to what the properties were or what that was about and I wondered if you could give me a little bit more information about that.

>> Arn Andrews: And I'm currently not only not finding the page, but I'm also going to ask Abe or others on the staff if they can speak to it. And if not we will get back to you.

>> Emily Harrison: Okay. I have other questions along those lines with other issues of writing down assets. So do you want me to hold onto those? I actually don't want you to get back to me separately because I think it's important for our board to understand the actions that were taken on these assets. Sing the long range property management plan is one of the tasks that we're going to have to take up. And I think it would be important for us to understand what the decision was that was made to move the value of those assets down.

>> Arn Andrews: Any follow-up we would do, we would do to the entire board.

>> Emily Harrison: That sounds good. Let me just say that on page 19 there was a developer loan again that was written down, 100% provision for doubtful accounts on page 20, a DDR was written down again 100%

provision for doubtful accounts. I can provide these to Mr. Andrade but I think these are important things to know a little bit more about.

>> Arn Andrews: If you have specific questions it might be helpful if you provide us with all of your questions and we will provide the answers to the board.

>> Emily Harrison: I would be happy to do that.

>> Mayor Reed: Micaela.

>> Micaela Ochoa: Thank you, a couple of questions. Does the Successor Agency have a credit rating and if so, what is it?

>> Arn Andrews: We do have a credit rating. We are currently in the double D category. We were recently affirmed by Fitch, however they did keep their negative watch on us.

>> Micaela Ochoa: And the third question is, do these financials, will they come to us for action at some point?

>> Arn Andrews: I believe --

>> Richard Keit: No, they won't.

>> Mayor Reed: Rebecca.

>> Rebecca Haggerty: So when I looked at the financials, one of the first things I tend to look at the independent auditor's report. And I noticed, in this particular instance I'm looking at the SARA financial statements, page 1. They actually gave a clean opinion, which means basically the statements referred to present fairly in all ministerial respects the financial position. Most notably they did not give a going concern type opinion or negative

type opinion, which I think often if an agency isn't able to be perceived to operate past a year, they will give that type of opinion. So I thought that was quite encouraging. I don't know if there was something you could speak to in that way.

>> Arn Andrews: They -- to your point they did not give a going-concern opinion. They do flag several areas, mostly the variable rate debt which I spoke to, you know those are elements that can significantly alter the composition of the annual debt service. They also spoke to material weakness in terms of staffing.

>> Rebecca Haggerty: Yes.

>> Arn Andrews: And that is a an area that the city administration is addressing with SARA to make sure that we have a plan moving forward to make sure it is adequate. But to your point, they did not give a going concern.

>> Rebecca Haggerty: I was encouraged by that, helpful.

>> Arn Andrews: We were, too.

>> Mayor Reed: Any other questions? I have no request from the public to speak on this item so this is just a presentation, discussion, there's no action that this oversight board needs to take on these.

>> Arn Andrews: Correct.

>> Mayor Reed: And so you'll get the responses and get an info memo to us in the ordinary course here, all right good. Can we move on I think to the item 6.2, urban markets settlement dispute regarding release of retention and our recommendation of a resolution on that.

>> Richard Keit: Richard Keit. Managing director of the successor agency. I just wanted to speak, one of the things that's most difficult as many of you are aware of, we don't know until usually the end of the fiscal year the

unsecured portion. And in the past, that is actually helped us. It could even -- it could hurt us. And the other thing to the mayor's point on development, we'll definitely work with Larry Stone's office on noting some time before the end of the fiscal year, February or March, and the county's been very helpful in the past of acknowledging new development. So if anything is in there that can possibly help us by the end of the fiscal year that would be useful, obviously. On to urban market. This is a rather unique situation. That I think in the end is a win-win for both the developer and the agency. We were faced with a unique problem of owing urban markets $600,000 in retention. And based on what you've just heard, our dire fiscal situation, at least in the current year, we were -- we worked very hard to negotiate, and it was very successful negotiation, we think, with urban market. Urban market, we put in a $6 million package for both public improvements and part of it, half of that, 2.5 million was loan, 2.5 was a grant, and $1 million in public improvements, for I think what is, highest very classic redevelopment in the north area of our downtown. This developer wanted to come forward with the urban market, most of you are familiar with it, to really make a difference, and it also will be a great asset. It already is a great asset for downtown but it will continue to be as the North San Pedro housing is developed just to the north of that over the next few years. So in working with them of course they wanted the full $600,000. And this was obligated for their contractual obligations for their contractors and subs. It wasn't a give me it was part of the deal. We went to them, we've worked it out where we provided $100,000 in cash. It's an enforceable obligation on our enforceable obligations list. We could have paid the full $600,000 without going to the board if we had the money. So in lieu of that we've proposed this to go before the board, the $100,000 in cash, we reduced the loan balance from 2.25 to 1.85. We extended the term, the rate, simple interest rate remained the same. The monthly payment we wanted to waive for five years. And when that monthly payment starts accruing, you see it really only drops a thousand a month. So if you took what we would get paid, the $5600 a month roughly, over that five-year period that we're waiving it, that only still only comes to $300,000 so they were offsetting that with saving $500,000 immediately in cash. So I think that's an important thing. Plus, the urban market really is not even a year old. It is in its infancy. As a project, and certainly given all the public money we put into it we wanted to succeed. So again I think short term benefit is 500,000 savings to the agency. The long term benefit to them is a longer time period to pay, and it will help them in their infancy years as a development project. They still have some vacancies to fill and put out quite a bit of money and they still owe their contractor. So they're going to -- the real cost in the loan term is the cost of money that they need to finance that we're not providing for that retention, that $500,000. And that's where that modification comes in.

>> Mayor Reed: Thank you, staff. I have one request to speak, I think I'll take that now. Martin Miney.

>> Good morning, thank you very much. To all of you. I wanted just to point out a couple of points that Richard mentioned. And in light of the $500,000 amount, we still have a real challenge at the market there, because we don't have the ability to go out and finance this kind of shortfall. Earlier we went to the board, and -- or to the council at that point. We ended up presenting the challenges of an unproven concept with the market. It doesn't have a track record. It's not stabilized yet. So as this situation was brought before us, it was not only at a terrible time for us, because we have additional improvements and costs for the market, but the additional $500,000 to pay off these subs and contractors that have been strung out for the last couple of years, has to come out of our pocket. We can't go out and just get loans for that. We are still in the sum-stabilized mode, that's been a hardship for us to try solve. I think Richard's correct, we've kind of sat down and laid out what our challenges are, what the needs for the board here are and I think we've come to a reasonable solution on it. So I'm open to answer any questions that you have. It is kind of a unique situation.

>> Mayor Reed: Okay. If we have any questions we'll call you back up. Let me just speak to this a little bit. The city council has approved a transaction. So for $100,000 in cash we saved a claim for $600,000 that we owes. And avoided the potential for penalties and interest over retention funds for Public Works projects and as well as a claim for damages. So I think it was a deal that we used a little bit of cash and got some benefit for the agency, and hopefully the project itself will survive even though they are not getting all the money they wanted and are owed. But given the state of the financial agencies nobody's getting all the money they wanted and are owed and most of the creditors are being fairly cooperative. None of them are happy but this is the kind of thing we have to do to stretch the little bit of cash we have pretty far. So I think it's a reasonable solution to a difficult solution. Rebecca.

>> Rebecca Haggerty: I had a few questions about it. I was also kind of keeping in mind our fiduciary duty to the whole community of course including the bond holders and the debt holders and the significant concern about cash flow. I kind of took a look at this situation in two lights. The first light I did was, what I would call the good neighbor, the neighbor test. Would I be happy to describe this situation to my neighbors? And in thinking about that? I was -- it's kind of a mixed bag. I was really encouraged that the Successor Agency was coming up with some creative ways to deal with the cash flow and that the developer was already willing to work with us on that because cash flow is really a critical thing. But I was a little bit discouraged with some of the terms, most notably the five years of not getting any cash for five years, and the principal being paid out in year 2042. Which is 30 years out. So to me that was more discouraging. But then I kind of went past that and looked at it from a net present value perspective. We did a calculation and our calculation came out that the new arrangement or proposed arrangement was about $380,000 less desirable than the existing arrangement. Because I kind of felt maybe if we looked at net present value beginning interest for all of those years, those additional years, maybe it would come out better. So I'm -- in my mind I'm not as keen on this arrangement. I really think it might be good to go back and renegotiate and see if we could plug some of that cash in the early years and bring the principal forward. Especially given the PowerPoint we saw earlier, where our debt is going to be tapering off closer to 2042, so we won't need that principal quite as much in that year, as maybe we could use it earlier years to pay off some of these early debt things. So my personal opinion is that it would be nice if we could get something a little bit more favorable to the community on this one.

>> Mayor Reed: Anybody else have a comment or question on it? There's no other public testimony. Staff do you have anything to add? Okay, is there a motion? I guess would be next in order. We need to approve the resolution or something.

>> Motion to approve.

>> Second.

>> Mayor Reed: Motion to approve the resolution approving the settlement. Further discussion on the motion? On that motion? All in favor, opposed.

>> No.

>> Mayor Reed: I got one nos.

>> Two other nos presidents.

>> Mayor Reed: Heard two nos. Micaela. Pass he on a 5-2 vote then. Okay that's approved. Next one is 6.3, José theater lease with comedy club of San José. Again another resolution authorizing the agency to negotiate and execute a lease for the comedy club of San José for the José theater. Memorandum to the oversight board, staff you do have comments on that?

>> Richard Keit: I do Mr. Chair. This is actually another very unique situation with José theater. It was a facility that the agency purchased a while ago and put in significant funding to upgrade the physical and also the seismic -- did a seismic improvements. It was originally built as a vaudeville theater, movie theater and then it was a movie theater for many years and closed down. And then we were able to secure a lease, the official name with the Improv is the comedy club of San José. They came to us knowing that on December 31st of this year our lease expires and we have a five-year option to renew. They chose not to renew it based on their current concern with lost revenue. This last year they lost $40,000 which is not a huge amount but obviously any loss for a company is not good. And it's the only one, at least on the West Coast facilities that lost money. There are 23 Improvs throughout the nation. This is a national credit tenant. Currently, they pay approximately $11,000 a year. The current is because it's base rent plus the -- I'm sorry, it's either base rent or progressive rent. And because they've hit those thresholds they've paid the progressive rent. They've cited for a number of reasons that they're losing money, the general economy is bad, that portion of downtown is a little bit weak unfortunately. And then, they also know with the minimum wage coming in, that there's going to be an impact on them, most of their waiters and waitresses make minimum wage. And in the State of California, the -- those folks have to receive

minimum wage regardless of what their tips are. So we're proposing a modification in terms because they did state that they would close down. This is a national credit tenant. One of the few in Downtown San José. And so basically what we're looking for is relief just for the two-year period. And we talked to the city council about this. The original proposal that we negotiated was $60,000 a year in base rent. And then 5% over $2.5 million in gross sales. We added a provision that if they hit the $3 million mark, that that goes up to 7%. In the last -- they've gone down in sales from 2003, these are gross sales, from $3.5 million to $2.7 million. So there's still a very good chance that they might proceed, that $2.5 million will increase our annual rent up to about $75,000 a year if they even hit the $2.8 million. I'm using that figure. Obviously it's a sliding provision. So our biggest concern is, if they do close not only do we lose a national credit tenant, but the spillover that comes to a comedy club and sometimes eat out downtown, but that we will receive no rent. Our analysis in my professional opinion is this can't be leased, no one is going to take the over. The stage itself is not big enough for theater, unfortunately that maybe theater companies could use. And our cameras at the downtown movie theaters are struggling so the likelihood of it going back to a movie theater is zero, in my estimation. So with that I'm ready to entertain questions. Oh, and the one other point. They are committing to ten years. I mean there is a provision as you see on the bottom, that either the Successor Agency or the tenant can have a six-month termination clause. We wanted that termination clause just in the event that we will have to solicit this property at some point and actually they showed some interest in acquisition of this property. And they do want to stay downtown. They do want to stay in San José and I think it's a real plus for the city, the downtown and the region. There's no other Improv in the Bay Area. Thank you.

>> Mayor Reed: Could you expand a little bit about the solicitation on this, and the constraints are, why we can't just sell it now, and when we might be able to put it on the market?

>> Richard Keit: This unfortunately is like all our solicitations except the ones that we are trying to get -- we will try to seek DOF and the board's approval just to help with our cash flow. And our J.P. Morgan payments that are coming up. But this is on our list. This is a county -- I'm sorry a J.P. Morgan on their lien, the lien and the county has a second mortgage on it. When we get our -- I'm sorry, it's 108. Getting confused, we have so many liens. We had a HUD 108 loan, on our 108 secured loan. But more important we do -- we will have to sell this at some point

when we get the finding of completion from the state after both due diligence reports are approved, the housing report that's going to be presented today in public hearing and the Successor Agency hearing that we hope to bring to the board in January and February. It will be on our solicitation' due diligence reports are completed and then after it's on the property management plan we get the finding of completion from the state Department of Finance in April or maize.

>> Mayor Reed: Well, this will keep the building occupied until we can dispose of it?

>> Richard Keit: Correct.

>> Mayor Reed: Hopefully it won't take ten years.

>> Richard Keit: And hopefully they stay in it even after someone buys it or they take the opportunity to acquire it, which they have voiced to us.

>> Mayor Reed: Emily.

>> Emily Harrison: The report that you put at our places about if change in the terms of the organize statement, just sort are the of an editorial comment, I don't really appreciate that so I hope we don't do that in the future. It does come to my second question or actually my primary question. The staff report did not -- it said that for the past ten years since the Improv opened in 2002 gross sales have exceeded the 2.5 threshold and yet I would appreciate how much that's meant in income. And that wasn't provided in the report in terms of what that means. And that seems to be an important piece of information to evaluate the terms that you're now proposing.

>> Richard Keit: That's correct. And you're right, that should be in there and that's why I mentioned it was a little over $11,000 a month.

>> Emily Harrison: It would be helpful for me to see over those years from 2002 which I believe was sort of the boom-time to now to see what that trend has been rather than hearing that it's $11,000 a month. Because I doubt it's been $11,000 a month over the past ten years.

>> Mayor Reed: Just add one thing in terms of this supplemental memo that came out today, or yesterday. The first memo went to the San José city council and was discussed Tuesday, I believe. And so the supplemental memo was done after that Tuesday meeting, when the staff went back and tried to renegotiate. So it's all happened since Tuesday and it's just the compression of the time frame here that makes it difficult. Obviously you didn't get much notice of this.

>> Emily Harrison: Well, and I truly really do appreciate the way the city council as the SARA is doing its best to manage these properties. The tension for me is the oversight board has responsibilities and it seems they follow the city council action and so I'm not quite sure how that tension gets resolved but that goes back to writing down property values and things. It's how do we figure that out, what is the responsibility of the SARA versus the city council taking action which we're then sort of given after the fact.

>> Mayor Reed: Okay. I have a couple of other requests to speak. Micaela.

>> Micaela Ochoa: Yes, I had similar questions about the percentage rent growth sales, and the other question I had is, are we being asked to approve what's noted in this packet or is there a contract with other terms and conditions that we'll be approving that we haven't seen today or that we haven't read?

>> Rick Doyle: I think the direction staff is seeking is to approve the terms as presented. And it would be memorialized in a formal lease. And it's understandably short notice. But the lease itself goes to buyers on December 31st and one thing I do want to note is part of the logic on this is to maximize tax increment, or what used to be called tax increment, the property taxes with a tenant with the caliber of the Improv, bringing income, it's more TI, it's growing the pie. And as you saw in the first set of slides, we want to grow it as much as

possible. And I think we all apologize that it's such short notice, but we're under a tight time frame and we just went to council on Tuesday as well. It's been a push given all the different issues we're trying to deal with.

>> Micaela Ochoa: Just for my clarification, I'm sorry, because I'm new. We're being asked only to approve what's in this packet?

>> Rick Doyle: The terms of the deal. That would be memorialized in the agreement. You would be authorized, the city council's authorized the City Manager to sign as executive director. But we need oversight approval of terms and conditions as well. And certainly when if lease is completed, everybody would get a copy of it.

>> Micaela Ochoa: Thank you.

>> Mayor Reed: Rebecca.

>> Rebecca Haggerty: Just to clarify. We would be approving the resolution but we would have to make a motion to update the resolution for the supplemental memo, right? Because the resolution has some specifics. It says we're authorizing a lease based on the memo from Debra Figone on December 7th. So the resolution would have to be updated to consider city council changes, right?

>> Rick Doyle: That's a good point, yes, you're right.

>> Rebecca Haggerty: So just to piggyback on my earlier conversation, I was really encouraged to see that there was some renegotiation that happened and augmented the deal. That's pretty neat.

>> Mayor Reed: Emily.

>> Emily Harrison: To speak to Mr. Doyle's comments and to the mayor's, I aside from the procedural errors, I really compliment the staff and the council on this action. I think keeping the downtown vital and keeping

especially the San Pedro square area, because that's where the foot traffic comes from, is for in improve. I think it's a good move, it's a good move for the community. Hour we work our relationships between staff and the oversight board I think will just be a marriage that continues to evolve. But it's a good job and I'll be happy to support it.

>> Mayor Reed: There are no requests from the public to speak on this one. Ed.

>> Ed Maduli: Yes, I would like to echo Rebecca's comments on the resolution and the now, therefore. In addition to the December 7th I would like to see and supplemented by the letter dated December 12th, so we include both memos. Thank you.

>> Mayor Reed: Okay. So the motion, if somebody wants to make it, would make the modifications to reflect both the memorandums and specifically the addition of 7% rate above $3 million. There's a section on that, that speaks specifically to the percentages.

>> Emily Harrison: Well, can I assume also that I will get the answer to the questions about what the ten-year history of income has been? Or the board will get that information?

>> Actually, the Improv has paid $1.6 million approximately over the 10-year period in rent.

>> Emily Harrison: I appreciate that, could I please get it by year?

>> Yes.

>> Emily Harrison: Thank you.

>> Mayor Reed: That was total rent over the ten years?

>> That's correct.

>> Mayor Reed: Okay, so to get an annualized version of it will be informative, I think. Anything else on that? Is there a motion? We have a motion to approve the resolution with the changes noted regarding both memorandums and the percentages. Further discussion? All in favor? Opposed? Count none opposed, that is approved. Next item is 6.4, a public hearing on housing due diligence. This is specifically a public hearing only. We're not to take action. If I understand it right, we have a hearing only and the next meeting whenever the next meeting, we're the take action. I don't know when the next meeting will be. Scheduled next week?

>> Leslye Corsiglia: Thank you, mayor, Leslye Corsiglia director of housing. It will be in January.

>> Mayor Reed: Today is strictly for public hearing. Obviously the board can ask whatever questions we have as well. So the staff presentation.

>> Leslye Corsiglia: Certainly. AB 1484 required that Successor Agencies conduct two due diligence reviews and we call that the DDR for short. One of these is of the low and moderate housing funds and the second one is for the nonhousing activities of the former Redevelopment Agency. As the merit stated the purpose of this hearing today is for that first one, which is for the low and moderate income housing fund. The purpose of the DDR is to identify any unencumbered redevelopment funds that are available for redistribution to taxing entities. Per the legislation, the city contracted with an auditing firm, BPM, and this arrangement was approved by the county as well to complete the DDR. In completing the report the auditor was required to follow specific procedures that were laid out by the state Department of Finance. Today we will hear the housing DDR. The second DDR we will be presenting to the oversight board in early 2013. We are hoping for January for that one as well. As required by the law, the oversight board is required to first hold this public hearing, which you're doing today, and final action has then to be at a subsequent hearing that is held at least five days later. In this case we will be agendizing it for the first meeting of the oversight board, on I think about 10th of January. The auditor is here. BPM is here today to discuss the report should you have any questions, as well as staff is hereby to answer any questions as well. So we're available.

>> Mayor Reed: All right, since this is a public hearing and not action I want to make sure anybody who wants to speak on this gets an opportunity. Let's do that now. So come on down.

>> Good morning, my name is John Guthrie, and I am current the county's ABX 126 audit manager. I was responsible for all nine of --

>> Mayor Reed: That's a great title, John.

>> Pardon?

>> Mayor Reed: That's a great title.

>> Thank you. I'm currently -- we completed seven of the nine audits. The final two we expect to go out this week. Your audit, AP audit was submitted by BPM and was issued on October 5th. And when we started -- when the law changed, and we looked at the due diligence requirements that were required we made an offer to all of the local cities which is since we have auditors in place doing these audits who familiar with the records, if you want we will amend the contracts to do the due diligence report as well. In doing that, five of them chose to pick the county, and four said we would like to hire another firm on our own contract, which was fine. The city went with BPM, the same firm that did the due diligence report. Now as a practice in looking at the due diligence reports, the county is reviewing those to assure that they are in concert with the AUP reports. To make sure that we don't have any discrepancies in the way that the cash is presented on both reports and that they reconcile. We're kind of in an awkward position here because we find a discrepancies for the city, and that discrepancy has to do with two of the issues that were on the due diligence report and shown differently on the AUP. If you've had a chance to look at the AUP report, those are enumerated in sections 8 and 9. And if you haven't read that, I really encourage the board members to read those because they are very informative about two of the key findings on the report. Section 9 deals with cash, and this was the fact that these -- this cash was undeposited with the successor housing agency on the date that the housing agency went out of business and

the RDA went out of business on January 31st of 2012. And that money was then taken by the city and put into the housing Successor Agency. Under the law, that money is required to actually be paid to the county auditor-controller for distribution to local taxing entities and that's $10 million. Second one has to do with the double-counting.of liability on a CRAF loan and both of these items by the way are issues that the city is meeting and conferring with the Department of Finance on. On that issue it's a very important issue because it means $88 million of future expenditures that if they have to be made, it will retard the payment of funds to all of the local taxing entities. My awkward position here today is that the same audit firm that I hired to do the AUP through a selection process, and they booked these two adjustments on the AUP as adjustments to assets or reductions of liabilities. They're now showing them on the due diligence report as non-booked items with footnote disclosure. And I think that's a discrepancy that since we are reviewing these and if we can't resolve this item then we will have to file an objection letter with the Department of Finance on those two items. More to the point I'm not sure it serves the City's interest to do that. Because if you look at schedule D on the due diligence report, you don't have to look at it because there are just two items which is cash of 4.3 million and expenditures against that of 4.3 million, it nets out to zero. I fully expect that whatever it is, there will be a zero bottom line. But if the Department of Finance determines that number should be $14 million, I don't know that there's authority in the law for the city to go back and amend the expenditures against that. So I'm not sure that serves your interest. And I'll be available for questions if you have them.

>> Mayor Reed:   Okay, let's see if there are any questions. Rebecca did you have a question or just have a comment?

>> Rebecca Haggerty:   I guess what I -- and John can you help us with that. It would be helpful to understand the board's role related to the DDR report. Going back to the law and looking at the section it does say that the oversight board should review, approve and transmit this determination of cash. So unlike other audit reports where we kind of accept it or we don't have to take action, I'm thinking that at our next meeting we will have to actually agree with the calculation. And is that sort of your understanding, as well, I think?

>> Yes it is.

>> Rebecca Haggerty: So I think that puts a little bit more onus on us, as fiduciary responsibility, to be very comfortable with the calculation. And maybe just to follow up, I agree with Mr. Guthrie. I think the $10 million probably needs to be added on to that schedule D as cash available and available to the ROPS is kind of what I'm thinking. I know this is public hearing, so we're not going to be making decisions, but I wanted to bring out those two points.

>> Mayor Reed: Any other questions for Mr. Guthrie? Yes Emily.

>> Emily Harrison: I'm afraid I didn't understand your last comment about why it was not to the City's interest to make the adjustment. Could you do that a little bit slower?

>> Yes. They're showing 4.3 million on the first line of that schedule as cash. Then down below they're saying less balance is needed to satisfy ROPS and et cetera, and they're showing $4.3 million as a deduction. Now if the Department of Finance, we write the objection letter saying it should be 14 and they agree with us and that adds up to 14 I don't know under the law if the city and the Successor Agency can go back and change the deduction to it. That's not a clear point. We looked at that and we can't figure that out. So there may -- it may be preempting a chance to go back and adjust it. Because I suspect that there would be zero balance in either case.

>> Emily Harrison: Would it be possible to ask the auditors what their thinking was in the change in the presentation? I'd like to understand that.

>> Leslye Corsiglia: The auditors are here. I would like to correct one statement that was made. The only item that was a meet and confer with the DOF is the CRAF item. The Department of Finance did not highlight the $10 million. Nor did the state controller's office, at least at this point we've not received any challenge to that, from either of those two bodies.

>> Mayor Reed: Okay so you have a question for the auditors if we could get the auditors down to answer that question or attempt to anyway.

>> Good morning. My name is Jim Babcock I'm the audit partner on both of these engagements so we work with both the county and the city. So to your question about the $10 million. Basically, we viewed that as an interpretation of the law. And so that's why when we were working with the county they made the case that it should be presented in one way through their counsel. And so we met with John and the counsel and so we treated that way on that particular report. When we started working with the city, they had a counter-view of that. Again, to what the legal part of it was. So in our mind we flagged it on that schedule as a footnote, if you will, but not in the schedule as an actual adjustment with that to be determined either by I think one of your members here, either by the -- yourselves, or it might have to go to the state for determination.

>> Mr. Babcock I'm actually probably a little bit more interested in the CRAF loan because that in your report and you went into an excruciating amount of detail about the double-accounting.

>> Yes.

>> What changed in your mind with that one?

>> Well, the same thing. There's a disagreement on the fact pattern if you will on that.

>> I think that's more of an accounting rather than a legal issue isn't it?

>> Well, it's a combination of both I believe. So we were, through the either the AUP procedures, or the due diligence procedures, we were identifying those things that were in question. So unlike an audit if you will where you're having a financial statement that you're having to make a final determination of what the accounting is, we were simply, or I should say the client, the county in this case was making the case for how it should be treated. So again, there was disagreement with the city about that. So it's, as we said in our report with the

county, it was going to Department of Finance for final resolution. And we thought that was the appropriate way to do it.

>> Emily Harrison: So perhaps my question is then a legal one and not an accounting one, but it goes back to Rebecca's, which is what's this board's role? Because do we have to make a call as a board? Or on those issues before we certify as we are required to do under the law? Are you sort of tossing it back in our lap?

>> Well, I think it was supposed to be something that was going to be a meet and confer, meeting with the Department of Finance for additional guidance on that. And yes, it would come back for final approval or decision by your board.

>> Emily Harrison: So if I understand, then, there would be resolution with the Department of Finance prior to this coming back for a vote with the board?

>> That's my understanding.

>> Emily Harrison: Well, that would be perfect because otherwise I think it sort of leaves us in a bit of a quandary.

>> I guess -- I don't know what the status of this meet-and-confer meeting. When we finished our report and that's what we said in the report that that was going to take place. I don't know if it's taken place yet or not.

>> Mayor Reed: Does anybody know? Looks like Patty might have an answer. For those of you who can't see her she's in the corner, it's Patty Deignan.

>> Patricia Deignan: The sequence is you will have to make the determination at your next meeting. Then it goes to the DOF. We don't even have a schedule with the DOF for meet and confer at this point.

>> Emily Harrison: As one board member that makes me extremely uncomfortable. I mean being right in the middle of two real opinions and the auditor kind of going with whoever the client is, is kind of not optimal.

>> Mayor Reed: Well, we have an alternative. Let the City Attorney --

>> Rick Doyle: Obviously, you're in the middle of two legal opinions. That's why you have conflicts council and Mr. Connor is here I don't know if today is the day to discuss that but it's certainly appropriate for the board to seek the legal advice from your conflicts counsel.

>> Arn Andrews: If I might add one other thing for board as you try to deliberate as to what your role is in this, we are not aware of anything in the legislation that contemplates a reconciliation between the AUP and the DDRs that are being issued. It is our understanding that the DDRs are the document that you contemplate. I think the AUP is an interesting point. But we are not aware of anything the legislation that says there has to be a reconciliation between the two documents.

>> Emily Harrison: I appreciate your point. My concern is not about the AUP. My concern is the point about whether 16 months of programming come could be made not a part of the cash to be swept back into the pot. And I'm not the expert. But I would have looked for guidance from the audit reports which I guess isn't available.

>> Leslye Corsiglia: If I could. Again, the $10 million was not questioned by the Department of Finance so it's not the subject of a meet and confer. So at this point, there would be no reason to wait, to wait for one because there is not going to be a conversation on that. So the DOF did audit the housing assets. They did not call that $10 million into question.

>> Mayor Reed: Okay. Any other questions for the auditor at this point? Rebecca.

>> Rebecca Haggerty: So I guess that -- I'm hearing that that means the $10 million would come back to this board in January for us to clarify our version of the DDR calculation and then that would be the forum for maybe making that decision?

>> Leslye Corsiglia: I think that's correct. And we would respectfully want to provide you with the City's position on this, because we feel very strongly that the facts that were included in the AUP are incorrect.

>> Rebecca Haggerty: And that was actually on my notes to ask for today, is ask for more information on the $10 million and the legalese behind it, kind of thing, because it was hard to cull that from the different documents. So I would welcome that feedback. Because again, as a fiduciary we're looking out for everybody, including the city in the affair and such.

>> Leslye Corsiglia: We'd be happy to do that.

>> Rebecca Haggerty: That would be great.

>> Mayor Reed: And then I'd certainly ask that our City Attorney, county attorney and conflicts counsel figure out how we get the advise of conflicts counsel, whether we do that in closed session or open session or memo or whatever so that we could be informed before we have to make a decision. I don't think we have to do that today, probably be better after you get the documents and conflicts counsel has got a chance to look at that as well before we have to make the decision. Anything else from the board? Was there anybody else who wanted to speak on this matter? I think we're done with the auditor now.

>> Thank you.

>> Mayor Reed: County counsel.

>> James Williams from the county of Santa Clara. Mr. Chairman, members of the board. I wanted to clarify one point that was referred to a couple of times by staff that the Department of Finance did not question the 10.1 million. That is because it was not included on the housing assets transfer form, so that issue was not before the Department of Finance. It could not be approved or disapproved by them in the housing asset transfer review. The CRAF issue was on the housing asset transfer form. It was disallowed by the Department of Finance. It is the subject of a meet and confer which has not been scheduled by the department. But the 10.1 was not on that form.

>> Leslye Corsiglia: If I could, that's incorrect. All of the 10.1 million was on that form.

>> Mayor Reed: Okay. There is a form somewhere.

>> I beg your pardon, but I would echo the desire to have -- I mean, I asked to have the AUP information provided to the board because I just didn't find the footnotes illuminating in the slightest. But truly the best way for us to make a good decision is for the city to give us a full understanding of what their thinking is and what they wanted to do and then I think I'll feel only that much more comfortable with what we apparently need to do.

>> Mayor Reed: Okay, anybody else wishing to speak on this? Abe, did you have a question or comment, I missed it earlier?

>> Abe Andrade: I just wanted to get a clarification on the $10 million, if that -- if the 10 million did come back would that be -- would that 10 million be made available to the Successor Agency or is that come back into the distribution to the taxing entities?

>> Leslye Corsiglia: I think we can answer that question when we come back.

>> Well, I think we can answer it now in that there is a process actually under the DDR review, and given our financial situation, if that money came back, you as an oversight board have the ability to retain funds. So the first

question would be, is there, based on the number that we talked -- the bottom line there, is any money available to go to the taxing entities? So if the $10 million goes back in there if there's money -- if there's any of that that would go to the taxing entities, given our financial situation, we would request that this board retain that money and then it would flow through the waterfall to all of our other creditors.

>> Leslye Corsiglia: Or alternatively, this is why I said we would need to come back to you, one of the enforceable obligations on our ROPS is for the Markham Terrace replacement housing project. And that is a project where we received federal funds to rehabilitate a structure. It needed more work. We ended up demolishing the building. We have a developer who's ready to go who has been. We must replace those units. It's a requirement of the low and moderate income housing fund to do that. And we do not have funds to do that, without this $10 million. So that's another wrinkle that we would like to be able to bring forward. If this were questioned.

>> Mayor Reed: All right. So we have some questions and things that will come back to us presumably for the meeting for January 10th when we'll try to make a decision. What happens if we don't make a decision on January 10th?

>> Leslye Corsiglia: It's interesting. Originally, by the law we were supposed to have come before you in October. And so we're already behind. We did notify the Department of Finance that we were behind. So I think we would just need to continue to let the -- let DOF know that we're still working on this and I don't think there's a penalty to us if we're late.

>> Mayor Reed: Okay, well you can't do that until the audits are all done. And so now we have audits and we can begin to make decisions. No one else wants to speak on this. There's no additional public testimony today. Any other questions or comments from the board? We're not taking action on this today, we'll do that on January 10th. So we'll move on to the next category, whether or not -- there's no closed session report. Anything else, any other report requirements beyond what we've already discussed? Nothing else. Future agenda items. That the board would like to get in front of us?

>> Richard Keit: Mr. Chair, we do have an update, 7.2, the update on audits.

>> Mayor Reed: Okay.

>> Richard Keit: I'll wait, can you put this slide up please?

>> Mayor Reed: On the outstanding audits are we less than ten?

>> Richard Keit: I wouldn't go that far yet. We're hoping by 2013 that's the case. The first one again is the $39 million overpayment supposedly that the county has been very helpful, and certainly agrees that there was never an overpayment. And we've both the county and the city proposed an alternative of modifying the ROPS which the state did not want to do for whatever reason the Department of Finance and we tried to work it out with Department of Finance and they were looking at four cases that were litigated or sent to the court. So our attorneys have been very aggressive now and they filed a lawsuit on December 5th with the Sacramento superior court in conjunction with the state, a friendly lawsuit that the Department of Finance and the state attorney general's office agreed that that way they could hopefully have a stipulated judgment by the end of December. That date is absolutely critical because otherwise, the county would be -- would have to hold back part of the tax increment. And then, we wouldn't be able to pay our enforceable obligations for the early part of 2013. So hopefully we hear any day now on that judgment. The next one is the housing assets. We did send in the form to do the meet and confer that we just discussed about the CRAF and two very small items and not including the 10.1 million that was just discussed also. The next one is the ROPS 3 administrative budget item. We've posted all the items. There was no dispute with DOF so we just left that on there because I don't think we have anything unless the attorneys know otherwise, a written declaration that it's resolved. But we don't see any further action needed on that. The next item is what we just talked about. The final report was received by the county on the AUP. And we're still drafting a response. And that may have to work very closely with the response, and the information provided for the housing due diligence report. The state controller's office ask that we submitted -- I'm sorry, we received the confidential draft back in November 6th, and we did respond confidentiality

back to the state controller's office. This has to do with asset transfers, mostly real property. And on 11 -- on November 16th within the ten-day required period and we still have not heard from the state controller's office on -- I'm sorry?

>> Mayor Reed: Question?

>> I just wondered why that report is confidential.

>> Richard Keit: That's what the state controller's office said it was, confidential until the final comes out, we will forward it to the board and post it on our Website. I think we've discussed the housing due diligence report enough. That's last on the first page. Next page, please. Then as I said, work began on the nonhousing, the Successor Agency due diligence report by BPM, at the end of October. We are hoping to bring that -- have the public hearing in January. We're still scheduled for two meetings, the January 10th and the -- I forgot what the two weeks after that -- 24th, I believe. And just for the board's notice and we'll put out an official calendar, we're still on schedule for the second and fourth Thursdays of every month. We hope as we wind down some of these audit reports that we can go to once a month. But please keep schedule, I said we'll post it before the end of the calendar year for the second and third Thursday. The annual audit was what was discussed by our firm on -- sorry, that went out December 4th. The question on that was, as these financials come back to the oversight board for approval, and they do not. But we wanted to share them with you, and that's the discussion that Arn had earlier. And it was the last audit ever of the former Redevelopment Agency from the beginning of the fiscal year through dissolution on January 31st. And then the subsequent report was beginning as a Successor Agency from February through the end of the fiscal year. The insufficiency fund report was completed on time and sent to the County Department of Finance on November 30th. I believe the due date was December 1st, so we got that, and Arn went over the highlights. The detailed report is attached to your memo. ROPS 4 is coming up before we know it, that work has just begun, we started that. And it's due to the Department of Finance in March and of course, we would also show provided to the oversight board. And then, we'll be working on the property management plan. We had hoped to start in December but with all this activity on solicitation of properties and also all these other reports and requirements, we will have that property management plan, we really can't bring it before the

board until the due diligence reports are complete, in any case. But we want to get that out in front of that, so we can get that finding, that necessary finding of completion as soon as possible. Thank you. Any questions?

>> Mayor Reed: Any questions on these audits and reports? Emily. Did you have one? Rebecca? No, okay. Then we'll go back to the question of whether or not there are any future agenda items? Looks like we've got plenty that are coming our way one way or the other.

>> Ed Shikada: Mr. Mayor, let me ask staff to note on the real property asset solicitation that that should be coming back.

>> Mayor Reed: Yes, when do we think we'll see that, January 10th?

>> Rick Doyle: Hopefully January, yes.

>> Mayor Reed: Okay. Open forum, I have no requests from the public to speak on the open forum so I think we are done.

>> Rebecca Haggerty: I had one more question, sorry.

>> Mayor Reed: Yes, Rebecca.

>> Rebecca Haggerty: So on the -- so we're going to look at the property sales in January. Will you be able to give us some information on that independent appraisal? I know we never got that and I thought just timing wise I might mention as well. I know the city has some closure dates, but we're open. So if you do want to send us stuff in the near term, we will be available. we are working through the holidays and available to review things. So both on the housing DDR and on the property sales, it would be great to get some of that information.

>> Richard Keit: We will provide it as soon -- and that's what we're waiting for. Unfortunately, the audit -- the appraiser that we hired had a close death in the family and that was delayed. We anticipate getting the valuations by the end of next week.

>> Rebecca Haggerty: Okay, yeah, because I know that the period closed for getting the bid, so kind of want to see how that all works out for the appraisal. So yeah.

>> Mayor Reed: Anybody else with anything, okay I think we're done, we're adjourned.