RICHARD DOYLE, City Attorney (88625)
NORA FRIMANN, Assistant City Attorney (93249)
ARDELL JOHNSON, Chief Deputy City Attorney (95340)
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, California 95113-1905
Telephone Number: (408) 535-1900
Facsimile Number: (408) 998-3131
E-Mail Address: cao.main@sanjoseca.gov

Attorneys for Respondents CITY OF SAN JOSE, CITY COUNCIL OF THE CITY OF SAN JOSE, REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE and the DIRIDION DEVELOPMENT AUTHORITY

(ENDORSED) FILED
MAY 14 2014
JAME

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

STAND FOR SAN JOSE; EILEEN HANNON, Petitioners and Plaintiffs, v. CITY OF SAN JOSE, CITY COUNCIL FOR THE CITY OF SAN JOSE, REDEVELOPMENT AGENCY FOR THE CITY OF SAN JOSE, DIRIDON DEVELOPMENT AUTHORITY, and DOES 1 through 10, inclusive, Respondents and Defendants. ATHLETICS INVESTMENT GROUP LLC, DOES 11 through 20, inclusive Real Parties in Interest.	**Case Number: 1-11-CV-214196** **RESPONDENTS' MEMORANDUM IN SUPPORT OF MOTION TO CONTINUE TRIAL DATE AND DECLARATION OF ARDELL JOHNSON** DATE: May 19, 2014 TIME: 9:00 A.M DEPT: 21

INTRODUCTION

Respondents bring this motion to continue the trial date to November 7, 2014, or such other date thereafter as suits the Court's calendar. The reason for the continuance is the Oversight Board's decision on May 2, 2014 to seek independent counsel in this matter. As a result of that decision, the City Attorney's Office cannot represent the

Oversight Board. Since the Oversight Board must adhere to public contracting requirements, it is doubtful new counsel will be in place in sufficient time to provide adequate advice or representation to the Board in this matter, which presently has an August 8, 2014 trial date. Therefore, Respondents request that the Court continue the trial date to November 7, 2014 and adjust the briefing schedule to require filing and service of Petitioners' opening brief on July 7, 2014, Defendants' responding brief on September 8, 2014 and Petitioners' reply brief on October 6, 2014.

STATEMENT OF FACTS

This case consists of two separate cases, consolidated for trial by this Court's order dated August 19, 2013. The original case, a petition for writ of mandate filed December 2, 2011, named the City of San Jose, the San Jose City Council, the City of San Jose Redevelopment Agency (RDA) and the Diridon Development Authority (DDA) as respondents/defendants. In the first amended petition, filed December 7, 2011, the petitioners challenged the legality of DDA's November 8, 2011 agreement granting an option to the Athletics Investment Group (AIG), to purchase certain properties (the "Diridon properties") to locate and build a baseball stadium. Petitioners alleged the agreement should be set aside because the respondent agencies failed to comply with CEQA and failed to put the transfer to a public vote required by the San Jose Municipal Code.

The second lawsuit added a new defendant, the Successor Agency Oversight Board. Essentially it alleges the defendants, for reasons not important to this application, should have voided AIG's option agreement when DDA transferred the Diridon properties to the Successor Agency in June 2013 pursuant to the State Controller's order, even though that was not a condition stated in the Controller's order.

On October 11, 2012 the Oversight Board selected Gale Connor, who was then a partner in the firm of Nossaman LLP, to act as its independent counsel. The agreement with the Nossaman law firm expired December 31, 2013, at which time this case was inactive due to a stay and did not have a trial date. On February 14, 2014, the Court set

the August 8, 2014 trial date. At that time lead counsel for Defendants had no reason to believe the Oversight Board would change its independent counsel or that the City Attorney's Office would not serve as lead counsel for the Oversight Board. On May 2, 2014, the Oversight Board voted, unexpectedly, to seek a new independent counsel for advice and representation in this matter.

As a result of the Oversight Board's vote, the City Attorney cannot proceed to represent it. The Oversight Board has not filed a responsive pleading, and it cannot do so until it resolves its representation. The Oversight Board has only one regularly scheduled meeting per month, although it sometimes holds a second meeting and may not meet in July. As a public agency, the Oversight Board is required to follow public contracting laws. This process, which entails issuing a request for proposal and vetting responsive bids, is unlikely to conclude in time for the Oversight Board to contract with an attorney to provide advice and representation to the Board before Defendants brief is due and the August 8, 2014 trial date occurs.

THE OVERSIGHT BOARD'S DESIRE TO HAVE INDEPENDENT COUNSEL REPRESENT THEM IS GOOD CAUSE TO CONTINUE THE TRIAL DATE

Rule 3.1332(c)(4) of the California Rules of Court provide that the substitution of trial counsel is a reason to continue a trial where there is an affirmative showing that he substitution is required in the interests of justice. In this case, the Oversight Board has decided it needs independent representation in this matter. The lawsuit naming the Oversight Board was dormant until February 14, 2014 because of the still extant possibility it might become moot as the result of action by the Department of Finance. Petitioners filed a Second Amended Petition for Writ of Mandamus and Complaint, etc. on March 3, 2014. Given the Oversight Board's infrequent meeting schedule, it made an expeditious decision on May 2, 2014 to retain new independent counsel to advise and represent it in this matter.

Given the certainty that the Department of Finance will act on the Successor Agency's Long Range Property Management Plan, and the possibility that action might yet

render Petitioners' claims moot, there should exist no urgency to proceed with this action against the Oversight Board before it can retain independent counsel. No transfer or development of the Diridon properties can occur until after the LRPMP receives approval. Therefore, a continuance presents no potential prejudice to Petitioners. On the other hand, substantial prejudice may accrue to the Oversight Board if it must proceed without independent representation.

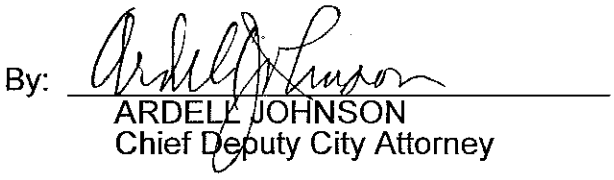
REQUESTED RELIEF

For the foregoing reasons, Respondents request that the Court continue the trial date to November 7, 2014, the filing and service date for Petitioners' opening brief to July 7, 2014, Respondents' responding brief to September 8, 2014 and Petitioners' reply brief to October 6, 2014. Alternatively, Respondents request that the Court take the trial off calendar and schedule a trial setting conference on August 8, 2014.

Respectfully submitted,

Dated: May 14, 2014

RICHARD DOYLE, City Attorney

By: 
ARDELL JOHNSON
Chief Deputy City Attorney

Attorneys for Respondent
CITY OF SAN JOSE

DECLARATION OF ARDELL JOHNSON IN SUPPORT OF MOTION TO CONTINUE THE TRIAL DATE

1. I am licensed to practice law in the State of California. I am a Chief Deputy City Attorney in the Office of the City Attorney, which represents the City of San Jose, the City Council of the City of San Jose, the Successor Agency to the Redevelopment Agency of the City of San Jose and the Diridon Development Authority in the within action. I have

personal knowledge of the matters stated in this declaration. If called as a witness would testify competently to the matters stated in this declaration.

2. I have attached as Exhibit A to this declaration, the Agenda for the Oversight Board's meeting on May 2, 2014 and staff memorandum pertaining to the selection of independent counsel. Notwithstanding staff's recommendation, the Board voted to seek a new independent counsel to represent it in this matter.

3. On May 2, 2014, I sent an email to Plaintiff's counsel, Blaine Green, and counsel for the Real Party in Interest, Geoff Robinson, informing them the Oversight Board for the Successor Agency had voted to seek a new independent counsel to represent them in this lawsuit and asking if they would stipulate to continue the trial date. Mr. Green informed me on May 5, 2014, he would not stipulate to a continuance.

4. Due to the Oversight Board's action on May 2, 2014, the City Attorney's Office cannot represent the Oversight Board going forward in this matter.

5. I am informed and believe a draft request for proposal for the Oversight Board to contract with new counsel exists and will be presented to the Oversight Board to approve, modify or reject at its next meeting.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in San Jose, California

Dated: May 14, 2014

ARDELL JOHNSON

A

OVERSIGHT BOARD - SUCCESSOR AGENCY TO THE SAN JOSE REDEVELOPMENT AGENCY

AGENDA
Special Board Meeting
FRIDAY, MAY 2, 2014 @ 1:30 – 3:00 PM
SAN JOSE CITY HALL – COUNCIL CHAMBERS
200 E. SANTA CLARA STREET, SAN JOSE, CA 95113

MEMBERS:
Chuck Reed, Chair, City of San Jose
Tony Estremera, Vice-Chair, Santa Clara Valley Water District
Abraham Andrade, City of San Jose
John Guthrie, County of Santa Clara
David Snow, County of Santa Clara
Ed Maduli, California Community Colleges
Micaela Ochoa, Santa Clara County Office of Education

ALTERNATE MEMBERS:
David Barry, County of Santa Clara
Nimrat Johal, Santa Clara County Office of Education
Pierluigi Oliverio, City of San Jose
Debbie Cauble, County of Santa Clara

STAFF:
Edward K. Shikada, Successor Agency Executive Officer
Richard Doyle, Successor Agency General Counsel
Richard Keit, Successor Agency Managing Director
Julia Cooper, Successor Agency Chief Financial Officer

ORDER OF BUSINESS

1. CALL TO ORDER

2. <u>CLOSED SESSION</u>

2.1 Conference with Conflicts Counsel (to be heard after Item 6.1, if necessary)

3. ADOPTION OF AGENDA

4. APPROVAL OF MINUTES - <u>From March 20, 2014 Meeting</u>

5. CONSENT CALENDAR – None

6. ITEMS SCHEDULED FOR ACTION/DISCUSSION

6.1 <u>Ratify Selection of Conflict Counsel</u>
<u>April 30 2014 Supplemental Memorandum – Ratification of Conflicts Counsel</u>
<u>Adopt a resolution</u>:
Ratifying the selection of Gale Connor, Esq., shareholder in the firm of Miller Starr Regalia, to provide legal services to the Oversight Board on an as needed basis.

7. REPORTS and CORRESPONDENCE

7.1 April 17, 2014, Letter from Department of Finance to the Managing Director regarding approval of the Recognized Obligations Payment Schedule 14-15A

8. FUTURE AGENDA ITEMS

9. OPEN FORUM

Members of the Public are invited to speak on any item that does not appear on this Agenda and that is within the subject matter jurisdiction of the Oversight Board. Speakers may be limited to no more than two (2) minutes at the discretion of the Chair.

10. ADJOURNMENT

The next Regular Oversight Board meeting will be held on May 22, 2014 at 9:00 a.m.

Oversight Board meetings will be held at San Jose City Hall located at 200 E. Santa Clara Street, San José, CA 95113.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the Oversight Board will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street Wing, San José, CA 95113 at the same time that the public records are distributed or made available to the Oversight Board.
To request an accommodation or alternative format for an Oversight Board meeting or printed materials, please call 408-535-1252 or (408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting.

OVERSIGHT AGENDA: 5-2-2014
ITEM: 6.1

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

MEMORANDUM

TO: OVERSIGHT BOARD	FROM: RICHARD DOYLE CITY ATTORNEY
SUBJECT: SEE BELOW	DATE: April 24, 2014

SUBJECT: RATIFICATION OF THE SELECTION OF CONFLICTS COUNSEL

RECOMMENDATION

It is recommended that the Oversight Board adopt a resolution ratifying the selection of Gale Connor, Esq., shareholder in the firm of Miller Starr Regalia, to provide legal services to the Oversight Board on an as needed basis.

BACKGROUND

On April 12, 2012, the Oversight Board adopted Section 700 of the Rules of Order for the conduct of Oversight Board business, which allows the Oversight Board to consult with outside counsel: (i) upon a request to consult with outside counsel by any member and the affirmative vote of four members of the Oversight Board, or (ii) whenever the interests of the Successor Agency and the Oversight Board actually conflict, as that term is used by Rule 3-310 of the California Rules of Professional Conduct.

On July 12, 2012, the Successor Agency released a Request for Qualifications (RFQ) for redevelopment dissolution counsel, and responses were received from the following firms: (a) Meyers Nave, (b) Miller & Owen, (c) Nossaman LLP, and (d) Atkinson, Andelson, Loya, Ruud & Romo.

On October 11, 2012, by Resolution No. 2012-10-1027, the Oversight Board unanimously selected Nossaman LLP, with Mr. Gale Connor as lead attorney, based on the recommendation of the RFQ evaluation panel, which consisted of attorney representatives from the County Counsel's Office, the Water District and the City Attorney's Office. The successor Agency entered into the Agreement with Nossaman LLP for Mr. Connor's services on October 11, 2012, with an expiration date of December 31, 2013.

On October 30, 2013, Mr. Connor notified the City Attorney's Office that he was leaving Nossaman LLP and joining the firm of Miller Starr Regalia as a shareholder. A new agreement with Miller Starr Regalia was entered into on December 19, 2013. The Nossaman Agreement was closed out upon payment of final invoices in December 2013.

At the February 28, 2014 Oversight Board meeting, the Board directed Successor Agency staff to return to the Board for a discussion of the selection of conflicts counsel.

ANALYSIS

The Successor Agency provides staff for the Oversight Board pursuant to Section 34179(c) of the Redevelopment Dissolution Law. The City Attorney's Office provides legal services to the Successor Agency, and in most cases it also provides legal services and advice to the Oversight Board. The Oversight Board may also direct the Successor Agency to provide additional legal advice than what was given by Successor Agency staff (Section 34179(n)). As stated above, the Oversight Board has adopted a provision in its Rules of Conduct specifying the use of Outside Counsel in conflicts situations.

The Oversight Board selected Gale Connor when he was a partner at Nossaman, LLP, based on an RFP conducted by City, County and Water District attorneys. The legal services provided by Mr. Connor since October 2012 have been timely, professional and helpful at reasonable rates. As noted in the attached announcement of his move to his new firm, Miller Starr Regalia is an established real estate firm specializing in the type of work the Successor Agency needs.

While a new RFP can always be undertaken, the time and resources required to do so is not recommended at this time.

RICHARD DOYLE
City Attorney

By: Tom Murtha
THOMAS D. MURTHA
Senior Deputy City Attorney

Miller Starr Regalia Announces New San Francisco Office; F. Gale Connor Joins New Office As Shareholder

November 4, 2013 (San Francisco, CA) -- Miller Starr Regalia (MSR), a preeminent California real estate law firm for more than 45 years, announced today that it is establishing a stronger presence in San Francisco with the opening of an office, the relocation of several attorneys and addition of a prominent real estate shareholder. The move will establish the firm in one of the most dynamic and innovative business environments in the world, strengthen its ability to represent national and regional clients, and bring the firm closer to its existing and expanding San Francisco client base.

F. Gale Connor, who has been practicing eminent domain and real property law in San Francisco for more than 25 years, has joined the firm as a shareholder in the new office. Connor comes to MSR from Nossaman LLP, where he was a partner in the firm's San Francisco office.

"Miller Starr Regalia has been a leading California real property law firm for 50 years. With the increase in real estate activity, including the migration of many high tech companies from Silicon Valley to South of Market (SOMA), the growth of biotechnology, healthcare and pharmaceutical companies, as well as land development and business expansion from clients headquartered in San Francisco or doing significant business here, we believe that establishing an office in SOMA places our transactional, land use and litigation attorneys in the heart of the action," said Anthony M. Leones, Miller Starr Regalia's managing shareholder.

Joining Connor in the San Francisco office are Miller Starr Regalia attorneys Lance Anderson, Kenneth Styles and Giselle Roohparvar. They will be supported by Miller Starr Regalia attorneys from other offices who will spend considerable time in the firm's San Francisco office.

Anderson, representing an impressive list of some of the nation's top companies, is a transactional shareholder with substantial experience in retail, office, industrial and laboratory leasing as well as the acquisition and disposition of all manner of real estate. Styles is a shareholder whose practice focuses on commercial and real estate litigation and title and escrow regulatory/consulting matters. Roohparvar is a litigation associate representing investment funds, financial institutions, government entities, corporations and property owners.

In addition to eminent domain, Connor's practice focuses on commercial leasing, acquisition and disposition of improved and unimproved properties, real estate finance and litigation of environmental, title and land use cases. He also serves as special outside counsel for real estate acquisitions for various public agencies. Connor earned his B.A. from Oberlin College with honors and his J.D. from Georgetown University Law Center. Connor is also Vice President of Chapter 2 of the International Right of Way Association (IRWA).

"Miller Starr Regalia, with its sterling real estate law reputation, is a wonderful fit for my practice and I welcome the opportunity to help shape and grow the firm's presence in San Francisco and throughout the state," said Connor. "I look forward to working with my Miller Starr Regalia colleagues to tackle various eminent domain and other real estate related matters."

"In today's legal market, there are tremendous growth opportunities for firms with a strong and well established legal expertise like Miller Starr Regalia, " added Mr. Leones. "This is an exciting time for the firm and in the months ahead we will be actively looking to expand our presence in San Francisco with high quality attorneys."

Miller Starr Regalia's new office is located at 153 Townsend Street, Suite 610, San Francisco, CA, 415-638-4800. The firm is headquartered in Walnut Creek, CA with a Southern California office located in Newport Beach.

About Miller Starr Regalia

Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for over forty-five years. For nearly all that time, our firm has written *Miller & Starr, California Real Estate 3d*, the 12-volume encyclopedia on California real estate. We call it "the Book." The Book is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. Our firm has expertise in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, construction, management, title insurance, environmental law, and redevelopment and land use. For more information, visit **www.msrlegal.com (http://www.msrlegal.com/)** .