

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-22

A RESOLUTION OF THE OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE THIRD RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR JANUARY THROUGH JUNE 2013 (ROPS 3), THE SIX-MONTH ADMINISTRATIVE BUDGET OF THE SUCCESSOR AGENCY CORRESPONDING TO ROPS 3, AND ASSOCIATED ACTIONS.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is winding down the Former RDA's affairs in accordance with AB 26, enacted on June 28, 2011, and Assembly Bill 1484 (AB 1484), enacted on June 27, 2012 (collectively, the Dissolution Laws); and

WHEREAS, the Oversight Board has been formed to oversee certain actions and decisions of the Successor Agency in accordance with the Dissolution Laws; and

WHEREAS, the San Diego County Auditor-Controller (County Auditor), the State Controller, and the State Department of Finance (DOF) also possess certain rights and obligations under the Dissolution Laws with respect to the Successor Agency's administration of the Former RDA's operations; and

WHEREAS, pursuant to California Health and Safety Code section 34177(1), Successor Agency staff must prepare a Recognized Obligation Payment Schedule (ROPS) on a forward-

looking basis for each six-month fiscal period, showing the payments to be made toward enforceable obligations and the funding source for the payments; and

WHEREAS, Successor Agency staff has prepared the proposed third ROPS covering the period from January 1, 2013 through June 30, 2013 (ROPS 3), a copy of which is included as Attachment A to the Staff Report accompanying this item (Staff Report), and which is incorporated herein by reference; and

WHEREAS, California Health and Safety Code section 34171(d)(1)(F) confirms that contracts necessary for the administration or operation of the Successor Agency, including, but not limited to, agreements concerning litigation expenses related to assets or obligations, settlements and judgments, and agreements related to the costs of maintaining assets prior to disposition, are enforceable obligations; and

WHEREAS, all contracts and agreements between the City and the Former RDA that are included in ROPS 3 were made for legitimate redevelopment purposes and will be of benefit to the local taxing entities; and

WHEREAS, California Health and Safety Code section 34177.3(b) states that the Successor Agency may create new enforceable obligations to conduct the work of winding down the Former RDA's operations, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance; and

WHEREAS, ROPS 3 includes a line item for costs, up to an aggregate maximum of \$500,000 during the applicable six-month period, that the Successor Agency may incur, above and beyond the costs estimated in specific line items in ROPS 3, for management and security of properties and other assets, and unforeseen litigation and claims; and

WHEREAS, ROPS 3 also includes a line item for costs, up to an aggregate maximum of \$500,000 during the applicable six-month period, that the Successor Agency may incur, above and beyond the costs estimated in specific line items in ROPS 3, in order to wind down the Redevelopment Agency's operations in an orderly fashion and to avoid or minimize liabilities, including, but not limited to, exposure to claims or litigation; and

WHEREAS, with respect to the two above-described line items in ROPS 3, the additional costs that may be incurred by the Successor Agency are not yet identified under an existing contract with a specific payee; and

WHEREAS, the DOF released an updated template of the ROPS on or about August 1, 2012, made further revisions to that template on or about August 9, 2012, and distributed written guidance regarding the contents of ROPS 3 on August 23, 2012; and

WHEREAS, Successor Agency staff has updated ROPS 3 to reflect the DOF's release of the revised, mandatory ROPS template, and is evaluating the DOF's more recent written guidance to determine whether any additional changes to ROPS 3 will be required; and

WHEREAS, California Health and Safety Code section 34177(m) requires the Successor Agency to obtain the Oversight Board's approval of ROPS 3 and to submit ROPS 3 to the DOF by September 1, 2012 (which is automatically extended to September 4, being the first business day after September 1), and subjects both the City and the Successor Agency to specified civil penalties in the event that ROPS 3 is not timely submitted to the DOF; and

WHEREAS, California Health and Safety Code section 34179(h) provides the DOF with a review period on ROPS 3, during which the DOF will make a determination on the amount of enforceable obligations and the proposed funding sources and may eliminate or modify any item on ROPS 3 prior to its approval; and

WHEREAS, based on California Health and Safety Code section 34177(m), the Successor Agency may, within five business days after the DOF's determination on ROPS 3, request additional review by the DOF and an opportunity to meet and confer with the DOF on disputed items in ROPS 3, and the DOF must notify the Successor Agency and the County Auditor regarding the outcome of its additional review at least 15 days before the date of the County Auditor's semi-annual distribution of property taxes related to ROPS 3; and

WHEREAS, California Health and Safety Code section 34182.5 enables the County Auditor to deliver written notice by October 1, 2012, objecting to the inclusion of any items in ROPS 3 that are not demonstrated to be enforceable obligations, and further enables the Oversight Board, in response to the County Auditor's objection, to refer any disputed ROPS 3 item to the DOF for a determination of what will be approved for inclusion in ROPS 3; and

WHEREAS, California Health and Safety Code section 34177(j) requires the Successor Agency to prepare, and to submit to the Oversight Board for approval, an administrative budget for each upcoming six-month fiscal period, estimating the administrative costs to be expended during the applicable fiscal period, identifying the proposed sources of payment for such administrative costs, and identifying proposed arrangements for administrative and operations services provided by a city or other entity; and

WHEREAS, Successor Agency staff has prepared a proposed six-month Administrative and Project Management Budget for the Successor Agency covering the period of January 1, 2013 through June 30, 2013 (ROPS 3 Administrative Budget), a copy of which is included as Attachment B to the Staff Report, and which is incorporated herein by reference; and

WHEREAS, the ROPS 3 Administrative Budget includes the total amount of \$4,195,500, of which \$2,800,750 is allocated to administrative costs and \$1,394,750 is allocated to project-

specific costs and litigation costs, as such categories of costs are described in California Health and Safety Code section 34171(b); and

WHEREAS, the ROPS 3 Administrative Budget contemplates the Successor Agency's payment of funds to the City in exchange for the provision of certain services by the City and a City-owned nonprofit public benefit corporation related to winding down the Former RDA's affairs; and

WHEREAS, the Oversight Board's decisions regarding approval of ROPS 3 and the ROPS 3 Administrative Budget will not become effective until after those decisions have been approved or deemed approved by the DOF in accordance with California Health and Safety Code section 34179(h), subject to the outcome of any meet-and-confer process on ROPS 3 initiated by Successor Agency staff with the DOF.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. ROPS 3 is hereby approved, with the proviso that Successor Agency staff is authorized to include in ROPS 3 the additional amounts of pass-through payments demanded in writing by the San Diego Unified School District and the San Diego Community Colleges District after the docketing of ROPS 3. The Oversight Board reserves the right to revisit the content of ROPS 3 in the future based on the outcome of the agreed-upon procedures audit which is anticipated by October 1, 2012, and any objections raised by the County Auditor or the DOF.
2. Successor Agency staff is authorized, with the approval of Oversight Board legal counsel, to make any necessary adjustments to ROPS 3 based on recent changes made by the DOF to the mandatory ROPS format, as well as written guidance from the DOF transmitted after the distribution of the updated ROPS format, provided that the substantive content of ROPS 3 remains substantially the same.

3. The ROPS 3 Administrative Budget is hereby approved.

4. The Successor Agency is authorized to make payments in accordance with the ROPS 3 Administrative Budget, utilizing the funding sources identified therein.

5. The Successor Agency is authorized to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS 3, consistent with California Health and Safety Code Sections 34171(d)(1)(F) and 34177.3(b).

6. The Oversight Board's approval of ROPS 3 is conditioned upon the following reservation of rights: the Oversight Board approves the items listed in the payment schedule for the ROPS, but reserves the right to revisit those items in the future based on any objections or questions subsequently raised by the County Auditor-Controller, the State Department of Finance, any member(s) of the public, and any member(s) of the Oversight Board.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on August 28, 2012. The Oversight Board adopted bifurcated motions with respect to the action items in this Resolution. In one motion, the Oversight Board approved the line items in ROPS 3 showing San Diego Gas & Electric and/or Sempra Energy as the payee of an enforceable obligation. That motion was adopted by a vote of 4 to 0, with Chair Nelson and Board Member Davies abstaining, and Board Member Dowd absent. In another motion, the Oversight Board approved all other action items addressed in this Resolution, with the exception of the item addressed in the first motion. That second motion was adopted by a vote of 5 to 1, with Board Member Davis voting no and Board Member Dowd absent.



Chair, Oversight Board

Vice-Chair, Oversight Board