

OVERSIGHT BOARD RESOLUTION NUMBER OB-2013-5

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING A LOAN AGREEMENT TO ADDRESS THE FUNDING SHORTFALL FOR THE SUCCESSOR AGENCY'S REMITTANCE OF THE FINAL INSTALLMENT PAYMENT TO THE SAN DIEGO COUNTY AUDITOR-CONTROLLER OWED AS A RESULT OF THE DUE DILIGENCE REVIEW OF HOUSING ASSETS, AND AUTHORIZING INCLUSION OF THE LOAN AGREEMENT IN FUTURE RECOGNIZED OBLIGATION PAYMENT SCHEDULES.

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 required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as amended by Assembly Bill 1484 (AB 1484); and

WHEREAS, California Health and Safety Code section 34177(d) requires the Successor Agency to remit unencumbered balances of the Former RDA's funds to the San Diego County Auditor-Controller (County Auditor), and these unencumbered balances include, among other things, the unencumbered balances of the Low and Moderate Income Housing Fund of the Former RDA (Housing Fund); and

WHEREAS, upon receipt from the Successor Agency, the County Auditor must distribute the unencumbered balances of the Former RDA's funds as general property tax

revenues to affected local taxing entities, such as the City, the County of San Diego, local school districts, and special districts (collectively, the Taxing Entities); and

WHEREAS, to determine the amount of unencumbered balances to be remitted by the Successor Agency to the County Auditor, California Health and Safety Code section 34179.5 requires the performance of two due diligence reviews applying agreed-upon procedures, including a review of the Housing Fund account balances (Housing DDR) and a review of the non-housing account balances; and

WHEREAS, pursuant to California Health and Safety Code section 34179.5(a), the Successor Agency selected, and the County Auditor approved, the independent accounting firm of Macias Gini & O'Connell, LLP (MGO) to complete each due diligence review of the Successor Agency's account balances; and

WHEREAS, based upon review of an original report prepared by MGO in November 2012 and a revised report prepared by MGO in February 2013, and after the completion of a statutory meet-and-confer process with the Successor Agency, the California Department of Finance (DOF) issued a final determination letter dated March 27, 2013, concluding that the unencumbered amount of cash and cash equivalents available for distribution to the Taxing Entities under the Housing DDR is \$13,244,908, plus any accrued interest on that sum that has accumulated while in the possession of the recipient (the Housing DDR Demand Amount); and

WHEREAS, the City and the Successor Agency filed a lawsuit in Sacramento County Superior Court on April 8, 2013, designated as Case No. 34-2013-80001454 (Lawsuit), against the DOF, the State Board of Equalization, and the County Auditor to challenge the payment of the Housing DDR Demand Amount; and

WHEREAS, on April 25, 2013, the court issued a verbal order denying the Successor Agency's requested injunction (Court Order), on the basis that the City could loan money to the

Successor Agency in accordance with California Health and Safety Code section 34173(h) to cover any funding shortfall for payment of the Housing DDR Demand Amount; and

WHEREAS, consistent with the Court Order and to avoid the imposition of onerous enforcement mechanisms threatened by the DOF, the Successor Agency promptly coordinated the payment of the Housing DDR Demand Amount in two installments under protest and with a full reservation of rights; and

WHEREAS, on May 10, 2013, the Successor Agency remitted the first installment payment to the County Auditor in the amount of \$11,005,779 (First Payment Amount) toward the Housing DDR Demand Amount; and

WHEREAS, the First Payment Amount comprises all of the unencumbered housing funds in the Successor Agency's possession and includes accrued interest on the entire Housing DDR Demand Amount from July 1, 2012 through May 10, 2013; and

WHEREAS, on May 22, 2013, the Successor Agency remitted the second (i.e., final) installment payment to the County Auditor in the amount of \$2,298,219 (Second Payment Amount) in order to satisfy the Housing DDR Demand Amount; and

WHEREAS, the Second Payment Amount is equal to Housing DDR Demand Amount, minus the First Payment Amount, plus accrued interest on the difference between these two amounts from May 11 through May 22, 2013; and

WHEREAS, to enable the Successor Agency to remit the Second Payment Amount, the City loaned funds of \$2,298,219 to the Successor Agency pursuant to the "Loan Agreement for Payment of Housing DDR Amount" (Loan Agreement) approved by the San Diego City Council on May 13, 2013; and

WHEREAS, under the Loan Agreement, the Successor Agency must identify the full repayment of the Loan Amount, plus accrued interest, as an enforceable obligation in ROPS 13-14B or any subsequent Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, to the extent that the Oversight Board and the DOF approve the Successor Agency's repayment of the Loan Amount as an enforceable obligation in a future ROPS and that sufficient funds are transferred by the County Auditor to the Successor Agency from the Redevelopment Property Tax Trust Fund (RPTTF), the Loan Agreement requires the Successor Agency to repay the outstanding balance of the Loan Amount plus accrued interest to the City.

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

1. The Loan Agreement, in the form included as Attachment C to the Staff Report accompanying this Resolution, is hereby approved.
2. The Successor Agency is authorized to include the Loan Agreement on ROPS 13-14B (covering the first half of calendar year 2014), or any subsequent ROPS, as a method of enabling the City to be repaid fully on the Loan Amount from monies in the RPTTF.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on May 28, 2013.



Chair, Oversight Board