

OVERSIGHT BOARD RESOLUTION NUMBER OB-2014-59

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING A LOAN AGREEMENT FOR PAYMENTS OF OUTSTANDING PROPERTY MANAGEMENT EXPENSES, 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 subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency, including the Successor Agency's approval of each Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, among other things, each ROPS shows the estimated payments owed by the Successor Agency to third parties for enforceable obligations during the upcoming six-month period and identifies the funding sources that will be used to make such payments; and

WHEREAS, California Health and Safety Code (Code) section 34173(h) provides that the City may, at its discretion, grant or loan funds to the Successor Agency for administrative

costs, enforceable obligations, or project-related expenses of the Successor Agency, and that such City loan can be qualified as an enforceable obligation of the Successor Agency if the repayment of the loan is reflected in an approved ROPS; and

WHEREAS, the Oversight Board's adopted resolution approving prior ROPS included language that authorized the Successor Agency 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 (Authorization for Services Contracts), consistent with Code sections 34171(d)(1)(F) and 34177.3(b); and

WHEREAS, although the DOF had approved the Oversight Board's Authorization for Services Contracts with respect to prior ROPS time periods through ROPS 13-14A, the DOF issued a letter dated November 8, 2013 (November 2013 Letter) rejecting the Authorization for Services Contracts for the first time in connection with expenditures during the ROPS 13-14B time period (January through June 2014); and

WHEREAS, the November 2013 Letter effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, to comply with the November 2013 Letter, the Successor Agency has recently presented, for approval by the Oversight Board and the DOF, various new contracts and new amendments to existing contracts that will involve the Successor Agency's expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, of relevance to this Resolution, the Oversight Board adopted certain resolutions on February 11, 2014, approving the following post-AB 26 contract amendments (collectively, the Service Contract Amendments): (a) the second and third amendments to an

existing agreement with Right Way Landscaping (Right Way) for landscaping and maintenance of certain Successor Agency properties in the City's redevelopment project areas located outside of downtown San Diego; (b) the second and third amendments to an existing agreement with Urban Corps of San Diego County (Urban Corps) for landscaping and maintenance of certain Successor Agency properties in the City's redevelopment project areas located outside of downtown San Diego; (c) the first and second amendments to an existing agreement with JMJ Incorporated (JMJ) for security services pertaining to Successor Agency properties located throughout most of the City's redevelopment project areas; and (d) the second amendment to an existing agreement with N.N. Jaeschke (Jaeschke) for maintenance of Successor Agency properties in downtown San Diego; and

WHEREAS, the DOF issued a letter dated April 1, 2014 (April 2014 Letter), rejecting the Service Contract Amendments with Right Way, Urban Corps, JMJ, and Jaeschke (collectively, the Contractors), but allowing the Successor Agency to re-submit the Service Contract Amendments to the DOF so long as the Oversight Board makes at least one of two findings; and

WHEREAS, in the April 2014 Letter, the DOF interpreted the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with Code section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with Code section 34171(d)(1)(F); and

WHEREAS, during the same meeting in which the Oversight Board has adopted this Resolution, the Oversight Board has made these two findings with respect to all of the Service Contract Amendments; and

WHEREAS, in addition, the Service Contract Amendments qualify as enforceable obligations of the Successor Agency under Code section 34171(d)(1)(F) because they are necessary to ensure ongoing maintenance of Successor Agency properties prior to their disposition; and

WHEREAS, since the Successor Agency's receipt of the November 2013 Letter, the Successor Agency has asked the Contractors to continue providing services under the Service Contract Amendments, pending approval by the Oversight Board and the DOF, to prevent the onset of any adverse circumstances at the Successor Agency's properties; and

WHEREAS, the ongoing maintenance and security of the Successor Agency's properties is intended to minimize risk or liability to the Successor Agency, and thus to benefit the interests of the local taxing entities, by: (a) decreasing the chance of injury to persons from dilapidated structures; (b) remedying the unsafe and unsightly condition of properties, thereby stabilizing property values; (c) ensuring compliance of the properties with local and state regulations related to property safety and site maintenance regulations, including the prevention of graffiti, vandalism, illegal dumping, and other public nuisances; (d) alleviating blight in the communities in which the properties are located; and (e) permitting the Successor Agency to retain tenants on certain properties until such time as the Successor Agency disposes of the properties in accordance with the Long-Range Property Management Plan; and

WHEREAS, as a result of the ongoing provision of these necessary services under the Service Contract Amendments, the Successor Agency owes outstanding invoices to the Contractors in the cumulative amount of \$28,216.97, as follows: (i) \$19,816.25 to Right Way; (ii) \$3,848.76 to Urban Corps; (iii) \$3,360.00 to JMJ; and (iv) \$1,191.96 to Jaeschke; and

WHEREAS, the Successor Agency needs to pay these invoices promptly, without further delay, to avoid economic hardship on the Contractors, who are all either nonprofit entities or small businesses that cannot afford to sustain unpaid invoices for a prolonged period of time; and

WHEREAS, the prompt payment of these invoices will benefit the local taxing entities by ensuring the Successor Agency's fulfillment of its obligation to maintain properties in a safe and sanitary condition and by avoiding the filing of any claims by the Contractors against the Successor Agency for monetary damages based on breach of contract, promissory estoppel, or other available legal theories; and

WHEREAS, the City has determined to loan the aggregate amount of \$28,216.97 (Loan Amount) to the Successor Agency to ensure prompt payment of the outstanding invoices to the Contractors, and the Successor Agency has determined to accept the loan of City funds for this purpose; and

WHEREAS, the Successor Agency will commit to repay the Loan Amount to the City, subject to the terms and conditions of the proposed Loan Agreement for Payments of Outstanding Property Management Expenses (Loan Agreement); and

WHEREAS, under the Loan Agreement, the City will disburse the Loan Amount to the Successor Agency in installments as needed by the Successor Agency to pay the outstanding invoices to the Contractors during the ROPS 13-14B time period; and

WHEREAS, the Loan Agreement contemplates that the Successor Agency will identify the Loan Agreement, including the full repayment of the Loan Amount plus accrued interest, as an enforceable obligation on the seventh ROPS covering the period of January through June 2015 (ROPS 14-15B); and

WHEREAS, the Loan Agreement further contemplates that, commencing with ROPS 14-15B and continuing with each successive ROPS, the Successor Agency will request an allocation


of property taxes from the Redevelopment Property Tax Trust Fund (RPTTF) for repayment of any portion of the Loan Amount that has been disbursed by the City and has not yet been repaid to the City; 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 ROPS 14-15B and that sufficient funds are transferred to the Successor Agency from the RPTTF by the County Auditor corresponding to any given ROPS time period, the Loan Agreement requires the Successor Agency to repay the outstanding balance of the Loan Amount plus accrued interest to the City as soon as possible after the commencement of the applicable ROPS time period.

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

1. The Loan Agreement, in the form included as Attachment A to the Staff Report dated April 17, 2014 accompanying this Resolution, is hereby approved.
2. The Successor Agency is authorized to include the Loan Agreement on ROPS 14-15B (covering the first half of calendar year 2015), and 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 April 21, 2014.



Chair, Oversight Board