

OVERSIGHT BOARD RESOLUTION NUMBER OB-2015-14

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF  
SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE  
AMENDED AND RESTATED LONG-RANGE PROPERTY MANAGEMENT  
PLAN GOVERNING THE DISPOSITION OF THE FORMER  
REDEVELOPMENT AGENCY'S NON-HOUSING REAL  
PROPERTY ASSETS AND RELATED 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) enacted on June 28, 2011, 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, based on a current inventory, the Successor Agency owns a total of 48 non-housing real property assets (each, a Property, and collectively, the Properties), some of which encompass multiple individual parcels; and

WHEREAS, California Health and Safety Code (Code) sections 34191.1 and 34191.3 entitle the Successor Agency, upon the State Department of Finance's (DOF) issuance of the finding of completion, to submit a long-range property management plan (PMP) that addresses the disposition and use of the Properties; and

WHEREAS, the DOF issued the finding of completion to the Successor Agency in a letter dated December 2, 2013; and

WHEREAS, pursuant to Code section 34191.5(b), the Successor Agency must prepare and submit the PMP to the Oversight Board and DOF no later than six months following the DOF's issuance of the finding of completion – June 2, 2014 in this instance; and

WHEREAS, Code section 34191.3 confirms that the PMP, in the final form approved by the DOF, will govern, and supersede all other provisions of the Dissolution Laws relating to, the disposition and use of the Properties; and

WHEREAS, pursuant to Code section 34191.5(a), the Community Redevelopment Property Trust Fund, to be administered by the Successor Agency, is established to serve as the repository of the Properties; and

WHEREAS, Code section 34191.5(c)(1) requires inclusion of certain information as to each Property in the PMP, including the acquisition date, acquisition value and current estimated value, purpose of acquisition, parcel information (address, lot size, zoning), any available appraisal information, estimated revenues, history of environmental contamination and remediation efforts, description of potential for transit-oriented development and advancement of local planning objectives, history of previous development proposals and rental/lease, and proposed use or disposition; and

WHEREAS, Code section 34191.5(c)(2) requires categorization of the Properties within four permissible uses in the PMP, including (i) retention for governmental use pursuant to Code section 34181(a) (Governmental Use Properties); (ii) retention for future development (Future Development Properties); (iii) sale or liquidation (For Sale Properties); and (iv) fulfillment of an enforceable obligation (Enforceable Obligation Properties); and

WHEREAS, on April 25, 2014, the Oversight Board approved the original PMP (Original PMP) prepared by the Successor Agency, and the Successor Agency submitted the same for DOF approval on April 26, 2014; and

WHEREAS, on April 6, 2015, the DOF informed the Successor Agency that it would not approve the Original PMP as submitted and that certain changes would be required; and

WHEREAS, pursuant to Oversight Board Resolution OB-2015-8, adopted on May 18, 2015, the Oversight Board approved the Successor Agency's transfer of ten Governmental Use Properties identified in the Original PMP to the City outside of the PMP, and the DOF approved the Oversight Board's action by letter dated August 28, 2015; and

WHEREAS, the Successor Agency has prepared the Amended and Restated Long-Range Property Management Plan, including a narrative summary and four exhibits (collectively, the ARPMP), a copy of which is included as Attachment 1 to Staff Report accompanying this Resolution (Staff Report); and

WHEREAS, the ARPMP amends and restates the Original PMP in its entirety to incorporate changes required by the DOF, add certain properties inadvertently not included in the Original PMP, delete the ten Properties to be transferred to the City as Governmental Use Properties outside of the PMP, reflect revised disposition strategies for certain properties, and make other revisions and clarifications to facilitate implementation of the ARPMP; and

WHEREAS, with reference to the four permissible use categories, the ARPMP includes: (i) eight Governmental Use Properties to be transferred by the Successor Agency to the City for continued use and operation; (ii) 22 Future Development Properties to be transferred by the Successor Agency to the City for future redevelopment purposes; (iii) six For Sale Properties to be sold by the Successor Agency to a third party; and (iv) two Enforceable Obligation Properties to be retained by the Successor Agency for fulfillment of the underlying enforceable obligation; and

WHEREAS, in the case of For Sale Properties, the Successor Agency, or its designee, would offer the properties for sale in accordance with applicable regulations and procedures, and

any net proceeds from the sale would be distributed to the affected taxing entities (Taxing Entities) in accordance with AB 1484; and

WHEREAS, the Successor Agency interprets Code section 34191.5 as authorizing transfer of the Future Development Properties to the City under Code section 34191.5(c)(2)(A) without execution of a compensation agreement with affected Taxing Entities pursuant to Code Section 34180(f) (Compensation Agreements). However, the DOF has taken the position that Compensation Agreements are required in connection with the transfer of Future Development Properties. Therefore, pursuant to DOF direction, the ARPMP provides that the City agrees, under protest and with a full reservation of rights, to execute a Compensation Agreement with the affected Taxing Entities in exchange for the Successor Agency's transfer of each Future Development Property to the City in accordance with the ARPMP. Each Compensation Agreement shall specify that Net Proceeds (as defined below) from (1) the City's use of a Property, and (2) the City's disposition of a Property, will be remitted by the City to the County Auditor-Controller for distribution to the Taxing Entities in proportion to their respective shares of the property tax base; and

WHEREAS, for Future Redevelopment Properties retained by the City, Net Proceeds will equal income generated from the Property and received by the City, if any, minus all costs to the City of improvement, environmental remediation, operation, and maintenance of the Property. For Future Redevelopment Properties sold or disposed of by the City in a manner consistent with the future development objectives of the Property described in the ARPMP, Net Proceeds will equal sale or disposition proceeds received by the City, if any, minus all costs to the City of improvement, operation, environmental remediation, maintenance, and disposition of the Property; and

WHEREAS, the ARPMP provides that no Compensation Agreements will be required, and the City may retain proceeds from the use or disposition of the Future Development Properties, if a court order, legislation, or DOF action or policy change reverses the DOF's prior directive regarding Compensation Agreements in connection with Future Development Property transfers (a Reversal). Each Compensation Agreement will be structured so that if a Reversal occurs after the execution of the Compensation Agreement, the City may unilaterally terminate it and retain all proceeds from the use or disposition of the Property. In the event of a Reversal prior to the full execution of a Compensation Agreement, the City's commitment to execute a Compensation Agreement with respect to each Future Development Property shall have no further effect; and

WHEREAS, the ARPMP provides that the City reserves the right to transfer ownership of any Future Development Property back to the Successor Agency, in which case the Successor Agency will promptly liquidate such Property in accordance with Code section 34191.5(c)(2)(B), in the event that either: (a) the City is unable, despite its diligent efforts, to execute a Compensation Agreement with the Taxing Entities with respect to that Property, or (b) the City disagrees with the compensation amount arising from a Compensation Agreement for that Property or from negotiations with the Taxing Entities; and

WHEREAS, the DOF has taken the position that certain Properties previously classified by the Successor Agency as Enforceable Obligation Properties are not subject to enforceable obligations. The Successor Agency maintains that these Properties are subject to enforceable obligations and therefore properly classified as Enforceable Obligation Properties, but has reclassified them as either For Sale Properties or Future Development Properties pursuant to DOF direction, under protest, to facilitate approval of the ARPMP. The ARPMP provides that the Successor Agency and the City reserve their rights to challenge the DOF's directive with

respect to classification of these Properties, and to restore the Enforceable Obligation Property classification of these Properties in the event a court order, legislation, or DOF action or policy change reverses the DOF's directive; and

WHEREAS, the Successor Agency has reclassified these Properties into new categories in the ARPMP based on the DOF's assurances that any remaining pre-AB 26 contractual obligations affecting the Properties will continue to be paid and fulfilled by the Successor Agency using the Redevelopment Property Tax Trust Fund. The City expressly disclaims any financial responsibility for such remaining contractual obligations as the fulfillment of such obligations properly rests with the Successor Agency; and

WHEREAS, the California Legislature passed Senate Bill 107 (SB 107) on September 11, 2015. The Governor has until October 12, 2015 to either sign or veto SB 107, which if enacted would codify the requirement for Compensation Agreements in connection with transfer of Future Development Properties, and provide for reclassification of certain Properties containing parking facilities or lots as Governmental Use Properties; and

WHEREAS, the ARPMP provides that the Successor Agency reserves its right to administratively reclassify qualifying Properties containing parking facilities or lots as Governmental Use Properties if SB 107 is enacted; and

WHEREAS, the Successor Agency has taken the position that certain parcels within the Naval Training Center/Liberty Station site which are currently classified as Future Development Properties should be classified as Governmental Use Properties due to their tidelands trust status. The DOF is currently considering the legal arguments supporting the Successor Agency's position. The ARPMP provides that the Successor Agency reserves its right to administratively reclassify qualifying parcels within the Naval Training Center/Liberty Station as Governmental

Use Properties if the DOF concurs with the Successor Agency's position with respect to these parcels; and

WHEREAS, the ARPMP envisions that the Successor Agency will transfer to the City fee title ownership of certain Properties by grant deed, in substantially the form of Attachment 2 to the Staff Report; and

WHEREAS, the ARPMP envisions that the Successor Agency will transfer to the City all contracts and other items related to certain Properties by assignment and assumption agreement, in substantially the form of Attachment 3 to the Staff Report; and

WHEREAS, pursuant to Oversight Board Resolution OB-2012-34, adopted by the Oversight Board on November 20, 2012, the Successor Agency is authorized until the approval of a PMP by the DOF, to allow temporary access to the Properties for special events subject to the terms and conditions of Right of Entry Permits which shall include requirements for the benefit and protection of the Successor Agency's financial interests, provided that the organizer of the special event first obtains all approvals and permits required by law; and

WHEREAS, upon the Oversight Board's adoption of this Resolution, Successor Agency staff will transmit this Resolution and the ARPMP to the DOF for approval; and

WHEREAS, Code section 34191.5(c)(2)(A) provides that the Successor Agency will be authorized to dispose of the Properties in accordance with the PMP ultimately approved by the DOF.

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

1. The Board approves the ARPMP in substantially the form attached to the Staff Report as Attachment 1, including the narrative summary and four exhibits.
2. The Board approves the Successor Agency's execution of all documents reasonably necessary to implement the ARPMP approved by the DOF (Final Approved

ARPMP), including but not limited to any conveyance instruments or other appropriate actions necessary to implement the Final Approved ARPMP.

3. Following the DOF's approval of the Final Approved ARPMP, the Successor Agency shall continue to be authorized to allow temporary access to the Properties for special events subject to the terms and conditions of Right of Entry Permits, which shall include requirements for the benefit and protection of the Successor Agency's financial interests, provided that the organizer of the special event first obtains all approvals and permits required by law, until such time that the Successor Agency disposes of the Properties in accordance with the Final Approved ARPMP.

4. The Successor Agency is authorized to allow short-term access to certain Properties for interim uses reasonable and compatible with the uses or disposition of those Properties identified in the Final Approved ARPMP, subject to any existing obligations, and subject to the terms and conditions of Right of Entry Permits, Leases, or other similar agreements, which shall include requirements for the benefit and protection of the Successor Agency's financial interests, provided that the permittee, lessee, or other such party obtains all approvals and permits required by law, until such time that the Successor Agency disposes of the Properties in accordance with the Final Approved ARPMP.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on September 21, 2015.

  
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Chair, Oversight Board