

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

**LOAN AGREEMENT FOR PAYMENTS OF OUTSTANDING
PROPERTY MANAGEMENT EXPENSES**

[CITY AND SUCCESSOR AGENCY]

This Loan Agreement ("Agreement") is entered into on this ____ day of _____, 2014, by and between the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("Successor Agency"), and the City of San Diego, a California municipal corporation ("City").

RECITALS

The Successor Agency and the City (collectively, the "Parties") enter into this Agreement with reference to the following circumstances:

A. The former Redevelopment Agency of the City of San Diego ("Former RDA") dissolved on February 1, 2012 pursuant to Assembly Bill x1 26 ("AB 26"), at which time the Successor Agency assumed the Former RDA's assets, rights, and obligations under the California Community Redevelopment Law. On June 27, 2012, the Legislature enacted Assembly Bill 1484 ("AB 1484"), which clarified certain aspects of the process of the expeditious winding down of the Former RDA's operations. AB 26 and AB 1484, and subsequent legislation (collectively, the "Dissolution Laws"), require the Successor Agency to prepare a Recognized Obligation Payment Schedule ("ROPS") and accompanying administrative budget for each six-month period on a forward-looking basis. Under the Dissolution Laws, the San Diego County Auditor-Controller ("County Auditor") administers and makes semi-annual distributions of monies from the Redevelopment Property Tax Trust Fund ("RPTTF"), which is comprised of incremental property taxes generated in the City's redevelopment project areas.

B. Under California Health and Safety Code ("Code") section 34173(h), 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. Any such City loan can be qualified as an enforceable obligation of the Successor Agency pursuant to Code section 34173(h) if the repayment of the loan is reflected on a future ROPS and approved by the Oversight Board and the California Department of Finance ("DOF").

C. 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). 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). 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.

D. 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. Of relevance to this Agreement, 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.

E. 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. 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). Concurrent with the approval of this Agreement, the Oversight Board has made these two findings with respect to all of the Service Contract Amendments. 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 the Successor Agency's properties prior to their disposition.

F. 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. The ongoing maintenance and security of 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.

G. 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. 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. 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.

H. The City has determined to loan the aggregate amount of \$28,216.97 to the Successor Agency to ensure prompt payment of the outstanding invoices to the Contractors. The Successor Agency has determined to accept the loan of City funds for this purpose. The Successor Agency will commit to repay the loan to the City, subject to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1: LOAN AND REPAYMENT OF FUNDS

(a) Loan Amount. The City agrees to make a loan to the Successor Agency in aggregate amount of \$28,216.97 ("Loan Amount") for the purpose of allowing the Successor Agency to pay the outstanding invoices owed to the Contractors promptly, without further delay. The City shall derive all disbursements of the Loan Amount from the City's General Fund.

(b) Disbursement and Interest. The City shall 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. All disbursed and outstanding portions of the Loan Amount shall accrue interest at the rate earned by funds deposited by the City into the Local Agency Investment Fund, as it may be adjusted from time to time ("LAIF Rate"), from the date of disbursement until fully repaid. All repayments of the Loan Amount shall first be used to pay accrued interest and then to reduce the principal balance.

(c) Method of Repayment. The Successor Agency shall identify this 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"). In ROPS 14-15B, the Successor Agency shall request an allocation of property taxes from the 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. 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 the ROPS 14-15B time period, the Successor Agency shall repay the outstanding balance of the Loan Amount plus accrued interest to the City as soon as possible after the commencement of the ROPS 14-15B time period. If for any reason the Successor Agency does not receive a sufficient allocation of property taxes from the RPTTF to allow full repayment of the outstanding Loan Amount plus accrued interest in a timely manner, the Successor Agency shall continue to request the allocation of property taxes from the RPTTF in future ROPS until the outstanding Loan Amount plus accrued interest has been fully repaid. The Successor Agency shall exercise good faith efforts and shall pursue all available administrative remedies to ensure that the repayment of the Loan Amount is qualified as an enforceable obligation to be repaid to the City utilizing future RPTTF distributions.

(d) Source of Repayment. No funds or other assets of the Successor Agency, other than the allocation of property taxes from the RPTTF, may be used for the repayment of the Successor Agency's obligations under this Agreement. To the extent that sufficient RPTTF distributions for repayment of the Loan Amount are unavailable to the Successor Agency despite its exercise of good faith efforts in accordance with Section 1(c) above, the unpaid portion of the disbursed Loan Amount shall be treated as an expense to the City.

SECTION 2: BOOKS AND ACCOUNTS

The Successor Agency and the City shall each keep full and accurate books and accounts, records and other pertinent data showing their financial operations with respect to the disbursement, use, expenditure and repayment of the Loan Amount. Assuming that repayment of the Loan Amount is approved through the applicable ROPS, the City shall identify the outstanding Loan Amount plus accrued interest to the Successor Agency in advance of the scheduled payoff date.

SECTION 3: EFFECTIVE DATE

This Agreement shall become effective on the date on which this Agreement has been executed by duly authorized officials on behalf of both Parties (the "Effective Date"). It is understood that the Parties will not execute this Agreement unless and until this Agreement has been approved by the Oversight Board in accordance with Code section 34173(h) and approved, or deemed approved, by the DOF in accordance with Code section 34179(h).

SECTION 4: GENERAL PROVISIONS

(a) Agreement between Public Entities. The Parties acknowledge and agree that, as stated in California Government Code section 895, this Agreement is an agreement between public entities designed to implement the disbursement or subvention of public funds from one entity to the other and, as such, is not subject to the joint and several liability provisions of California Government Code sections 895 to 895.8.

(b) No Merger. In entering into this Agreement, (i) the City is acting in its capacity as a municipal corporation, (ii) the Successor Agency is acting in its capacity as a separate public entity from the City, and (iii) both the City and the Successor Agency are acting pursuant to the specific authority granted under Code section 34173(h) authorizing loan agreements between the City and the Successor Agency. Therefore, the Parties are not merged.

(c) No Third Party Beneficiaries. The terms of this Agreement are only for the benefit of the Successor Agency and the City, and there are no other intended or incidental third party beneficiaries hereto.

(d) No Waiver. If either Party fails to insist upon strict performance by the other Party of any covenant, term or condition of the Agreement, or fails to exercise any right or remedy following a breach, such failure shall not constitute a waiver of any breach of such covenant, term or condition or a waiver of the exercise of any such right or remedy.

(e) Amendment. This Agreement may be amended in writing upon the mutual approval of the Parties, subject to the approval of the Oversight Board and the DOF.

(f) Governing Laws. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

(g) Remedies. In addition to any other available legal rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Any such legal action must be instituted in a court of competent jurisdiction in the County of San Diego, California, subject to any applicable choice-of-venue provisions under California law.

(h) Severability. If any provision of this Agreement is determined in any legal proceeding to be illegal, invalid or unenforceable, such determination shall not affect the validity of the remaining provisions of this Agreement.

(i) Counterparts. This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all Parties had executed the same page.

(j) Entire Agreement. This Agreement integrates all of the essential terms and conditions related to the subject matter of this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to all or part of the subject matter hereof.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, and by the City of San Diego, to be effective as of the Effective Date.

SUCCESSOR AGENCY:

City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic

Date: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

By: _____

Kevin Reisch
Chief Deputy City Attorney

CITY:

City of San Diego,
a California municipal corporation

Date: _____

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

By: _____

Brant C. Will
Deputy City Attorney