

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

## LOAN AGREEMENT FOR PAYMENT OF HOUSING DDR AMOUNT

### [CITY AND SUCCESSOR AGENCY]

This Loan Agreement ("Agreement") is entered into on this 16<sup>th</sup> day of May, 2013, 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 (collectively, the "Dissolution Laws") require the Successor Agency to prepare a Recognized Obligation Payment Schedule ("ROPS") 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. California Health and Safety Code ("Code") section 34177(d) requires the Successor Agency to remit unencumbered balances of the Former RDA's funds to the 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"). 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"). To determine the amount of unencumbered balances to be remitted by the Successor Agency to the County Auditor, 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.

C. Pursuant to 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. Based on MGO's original report prepared in November 2012 and MGO's revised report prepared in February 2013 during a statutory meet-and-confer process, the California Department of Finance ("DOF") issued a final determination letter dated March 27, 2013, making certain adjustments to the calculations in the MGO's revised report and concluding that

the unencumbered amount of cash and cash equivalents available for distribution to the Taxing Entities under the Housing DDR (the "Housing DDR Demand Amount") is \$13,244,908, plus any accrued interest on that sum that has accumulated while in the possession of the recipient. The Successor Agency presently believes that the DOF's determination of the Housing DDR Demand Amount is overstated by \$4,143,116 due to improper adjustments to MGO's revised report on the Housing DDR and due to an additional accounting discrepancy discovered by Successor Agency staff. Of the Housing DDR Demand Amount, the Successor Agency does not possess approximately \$2.3 million in housing funds to be transferred to the County Auditor.

D. On April 8, 2013, the Parties initiated litigation in Sacramento County Superior Court, 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. During an ex parte hearing on April 25, 2013, the court issued a verbal order denying a requested injunction to prevent or delay the payment of the Housing DDR Demand Amount. The court accepted the DOF's position that the Successor Agency could not establish any irreparable harm even if the Successor Agency is forced to pay the entire Housing DDR Demand Amount immediately. The court decided that Code section 34173(h) allows the City to loan money to the Successor Agency to cover any funding shortfall for payment of the Housing DDR Demand Amount and, if the Successor Agency prevails in the Lawsuit in terms of causing a reduction in the Housing DDR Demand Amount, to obtain a repayment of the loan amount through the distribution of RPTTF related to a future ROPS. A hearing on the merits of the Lawsuit is presently scheduled for September 27, 2013.

E. On April 20, 2013, the DOF sent a letter demanding that the Successor Agency pay the Housing DDR Demand Amount no later than May 20, 2013. The DOF indicated that the Successor Agency could discuss an installment payment plan with the DOF if the Successor Agency cannot immediately remit the entire Housing DDR Demand Amount. The DOF stated that, in the event that the Successor Agency fails to make a full, timely payment of the Housing DDR Demand Amount, the State of California and the County Auditor may pursue onerous remedies under Code section 34179.6(h) to ensure prompt collection of the unpaid amount. Those remedies could include the withholding of sales and use tax from the City and the reduction of property tax allocations to the City or the Successor Agency, or both, or the filing of a lawsuit to collect the unpaid amount. In opposing the requested injunction in the Lawsuit, the DOF expressed its intent to cause the County Auditor to reduce the property tax allocation from the RPTTF to the Successor Agency on June 3, 2013, in order to recoup any unpaid portion of the Housing DDR Demand Amount.

F. On May 10, 2013, the Successor Agency submitted a first installment payment to the County Auditor in the amount of \$11,005,779 ("First Payment") toward the Housing DDR Demand Amount. The First Payment comprises 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. The Successor Agency submitted the First Payment with a written explanation to the County Auditor and the DOF that the payment of the Housing DDR Demand Amount is being made under protest and with a full reservation of rights, and is being made in two installments, given that the Successor Agency possesses insufficient housing funds to pay the entire amount in a single lump sum.

G. In accordance with the court's order described in Recital D above, the City has determined to loan the Successor Agency sufficient funds to pay the second (i.e., final) installment toward the Housing DDR Demand Amount. The Successor Agency has determined to accept the loan of City funds in order to pay the second installment toward the Housing DDR Demand Amount. The Successor Agency will commit to repay the loan to the City, subject to the terms and conditions of this Agreement. The second installment payment is estimated to be no greater than \$2,298,467, which equals the sum of (i) the Housing DDR Demand Amount, (ii) minus the amount of the First Payment, (iii) plus accrued interest of \$578 from May 11 through May 31, 2013 on the difference between the Housing DDR Demand Amount and the First Payment. The source of the City loan will be the residual balance distributions from the RPTTF made by the County Auditor to the City in Fiscal Year 2013 as a result of the dissolution of the Former RDA. The residual balance distribution to the City arising from the Successor Agency's delivery of the First Payment to the County Auditor, standing alone, is estimated to be approximately \$2.3 million.

## 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 shall loan to the Successor Agency an amount not to exceed \$2,298,467 ("Loan Amount") for the purpose of allowing the Successor Agency to pay the second (i.e., final) installment toward the Housing DDR Demand Amount. The City shall disburse the Loan Amount to the Successor Agency promptly after the full execution of this Agreement, provided that the City has first received the residual balance distribution from the RPTTF arising from the Successor Agency's delivery of the First Payment to the County Auditor. The final Loan Amount shall equal the actual amount of the second installment payment toward the Housing DDR Demand Amount, as described in Recital G above.

(b) Interest. 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 fifth ROPS covering the period of January through June 2014 ("ROPS 13-14B"), and shall request an allocation of property taxes from the RPTTF for this purpose in ROPS 13-14B. 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 13-14B and that sufficient funds are transferred to the Successor Agency from the RPTTF by the County Auditor, the Successor Agency shall repay the outstanding balance of the Loan Amount plus accrued interest to the City as soon as possible and in no case later than June 30, 2014 (the "Maturity Date"). 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 on or before the Maturity Date, 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 approved by the City Council as the City's governing body and by the City Council as the Successor Agency's governing board and has been executed by duly authorized officials on behalf of the City and the Successor Agency (the "Effective Date"). After execution of this Agreement, the Successor Agency shall seek approval of the repayment of the Loan Amount to the City as an enforceable obligation. To become binding on the Successor Agency, the Successor Agency's repayment obligation hereunder must be approved by the Oversight Board in accordance with Code section 34173(h) and must be 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 governing bodies of the Successor Agency and the City, 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: 5/16/13

By: Bob Filner  
Name: BOB FILNER  
Title: MAYOR

**APPROVED AS TO FORM AND LEGALITY:**

JAN I. GOLDSMITH, City Attorney

By: Kevin Reisch  
Kevin Reisch  
Chief Deputy City Attorney

**CITY:**

City of San Diego,  
a California municipal corporation

Date: 5/16/13

By: Bob Filner  
Name: BOB FILNER  
Title: MAYOR

**APPROVED AS TO FORM AND LEGALITY:**

JAN I. GOLDSMITH, City Attorney

By: Brant C. Will  
Brant C. Will  
Deputy City Attorney

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