

RESOLUTION NUMBER R- 307297

DATE OF FINAL PASSAGE MAR 01 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO, ACTING IN ITS CAPACITY AS THE BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, (i) ADOPTING THE SECOND AMENDED AND RESTATED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE, (ii) AUTHORIZING THE PREPARATION AND SUBMITTAL OF THE INITIAL DRAFT OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE, AND (iii) AUTHORIZING THE MAYOR AND CHIEF FINANCIAL OFFICER TO CARRY OUT CERTAIN RELATED ACTIONS.

WHEREAS, from its formation in 1958 until its elimination on February 1, 2012, the 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 there are presently fourteen such project areas; and

WHEREAS, the Former RDA dissolved as of February 1, 2012, in accordance with a deadline for elimination of all redevelopment agencies throughout California set forth in Assembly Bill x1 26 (AB 26), as modified by the California Supreme Court in a final opinion issued on December 29, 2011, in litigation designated as Case No. S194861; and

WHEREAS, pursuant to Resolution No. R-04687 adopted effective September 13, 2011, the Former RDA adopted the original version of the Enforceable Obligation Payment Schedule (Original EOP Schedule) in accordance with California Health and Safety Code section 34169(g), which is one of the provisions in AB 26 that applied to the Former RDA prior to its dissolution; and

WHEREAS, the Original EOP Schedule listed the Former RDA's enforceable obligations as defined in California Health and Safety Code section 34167(d) and identified payments to be made toward those enforceable obligations during the period of time from September 1, 2011 through December 31, 2011, consistent with the requirements of AB 26 in effect at the time of adoption; and

WHEREAS, pursuant to Resolution No. R-04694 adopted effective January 31, 2012, the Former RDA adopted the Amended and Restated EOP Schedule (First Amended EOP Schedule), which reflected payments toward enforceable obligations during the period of time from January 1, 2012 through June 30, 2012; and

WHEREAS, the San Diego County Auditor-Controller (County Auditor), the State Controller, and the State Department of Finance (DOF) received the Former RDA's timely transmittal of both the Original EOP Schedule and the First Amended EOP Schedule (collectively, the Prior EOP Schedules), and they did not object to any line items in either of the Prior EOP Schedules; and

WHEREAS, pursuant to Resolution No. R-307238 adopted by the City Council of the City of San Diego (Council) effective January 12, 2012, the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), will serve as the successor agency to the Former RDA and will retain the Former RDA's housing assets and assume the Former RDA's housing responsibilities, all pursuant to the dissolution provisions in Part 1.85 of AB 26 (Dissolution Provisions); and

WHEREAS, at the time of the Former RDA's dissolution, the Successor Agency became vested with all of the Former RDA's authority, rights, powers, duties, and obligations under the California Community Redevelopment Law and, by operation of law, received all assets,

properties, contracts, leases, books and records, buildings, and equipment of the Former RDA for administration pursuant to the Dissolution Provisions; and

WHEREAS, in the near future, a seven-member oversight board (Oversight Board) will be formed to oversee certain actions and decisions of the Successor Agency in accordance with the Dissolution Provisions; and

WHEREAS, the County Auditor, the State Controller, and the DOF also possess certain rights and obligations under the Dissolution Provisions with respect to the Successor Agency's administration of the Former RDA's operations; and

WHEREAS, the Dissolution Provisions generally require the Successor Agency to administer the winding down of the Former RDA's affairs in an expeditious manner; and

WHEREAS, one of the Dissolution Provisions, California Health and Safety Code section 34177(a)(1), although ambiguously phrased, apparently requires the Successor Agency to hold a public meeting to adopt the most recent version of the Enforceable Obligation Payment Schedule (EOP Schedule) that had been adopted by the Former RDA's board, and then to transmit the EOP Schedule to the Oversight Board for its approval; and

WHEREAS, California Health and Safety Code section 34171(d)(1), which applies to the Successor Agency, sets forth a relatively narrower definition of an enforceable obligation in certain respects, as compared to the definition contained in California Health and Safety Code section 34171(d)(1), which applied to the Former RDA; and

WHEREAS, based on the narrower definition of an enforceable obligation, California Health and Safety Code section 34177(a)(1) states that the Successor Agency must remove generally all agreements between the City and the Former RDA, with limited exceptions, from the list of enforceable obligations in the EOP Schedule; and

WHEREAS, the Successor Agency believes that there are good faith arguments as to the continued validity of the agreements between the City and the Former RDA, and thus the Successor Agency intends to retain such agreements in the EOP Schedule; and

WHEREAS, City staff has prepared the proposed Second Amended and Restated Enforceable Obligation Payment Schedule (Second Amended EOP Schedule), which includes various changes in comparison to the First Amended EOP Schedule, such as: (i) the provision of additional details and background information regarding certain enforceable obligations; (ii) the deletion of several minor line items that were determined to be unnecessarily duplicative; (iii) the addition of certain enforceable obligations deemed reasonably necessary to the orderly winding down of the Agency's affairs; and (iv) the addition of certain language reserving the rights of the Successor Agency and the City with respect to the retention and expenditure of low and moderate income housing funds and bond proceeds; and

WHEREAS, given that the Oversight Board has not been formed yet and may not be in a position to review and approve the Second Amended EOP Schedule over the next several months, the Successor Agency intends to transmit a copy of the Second Amended EOP Schedule, upon its adoption, to the County Auditor, the State Controller, and the DOF, consistent with the procedure recently used in connection with the Prior EOP Schedules; and

WHEREAS, California Health and Safety Code section 34177(1)(2)(A) requires the Successor Agency to prepare an initial draft of the Recognized Obligation Payment Schedule (Initial Draft ROP Schedule) covering the period of time from October 1, 2011 through June 30, 2012, and to transmit the Initial Draft ROP Schedule to the County Auditor by March 1, 2012; and

WHEREAS, the content of the Initial Draft ROP Schedule will be similar to the content of the Second Amended EOP Schedule, except that California Health and Safety Code section 34177(1)(1) requires the Initial Draft ROP Schedule to specify the source of funds used to pay each enforceable obligation, such as low and moderate income housing funds, bond proceeds, reserve balances, administrative cost allowance, Redevelopment Property Tax Trust Fund (i.e., a fund consisting of property tax revenues, administered by the County Auditor in order to retire enforceable obligations), and other revenue sources; and

WHEREAS, the County Auditor is required to certify the accuracy of the Initial Draft ROP Schedule by April 15, 2012, but does not presently anticipate completing the certification until closer to July 1, 2012, which is the deadline for the County Auditor's completion of the agreed-upon procedures audit of the Former RDA under California Health and Safety Code section 34182(a)(1); and

WHEREAS, after the County Auditor has issued a certification of the Initial Draft ROP Schedule (Certified ROP Schedule), the Successor Agency must transmit the Certified ROP Schedule to the Oversight Board for its approval in accordance with California Health and Safety Code section 34177(1)(2)(B); and

WHEREAS, after the Oversight Board has approved the Certified ROP Schedule (Approved ROP Schedule), the Successor Agency must transmit the Approved ROP Schedule to the County Auditor, the State Controller, and the DOF, and must post the Approved ROP Schedule on the Successor Agency's internet web site, in accordance with California Health and Safety Code section 34177(1)(2)(C); and

WHEREAS, California Health and Safety Code section 34179(h) authorizes the DOF to review any action taken by the Oversight Board and to return the action for reconsideration by the Oversight Board and subsequent approval by the DOF; and

WHEREAS, for the first time during a meeting on February 15, 2012, the County Auditor distributed a preferred template for the Successor Agency to use in preparing the Initial Draft ROP Schedule, and such template is considerably different from the format that the Former RDA and the Successor Agency have used to prepare the Prior EOP Schedules and the proposed Second Amended EOP Schedule; and

WHEREAS, a very significant amount of work is associated with City staff's conversion of data from the Second Amended EOP Schedule to the County Auditor's preferred template for the Initial Draft ROP Schedule and the addition of information related to the source of funds used to pay each enforceable obligation; and

WHEREAS, due to these timing complications, the complete version of the Initial Draft ROP Schedule will not be available for the Council's review and approval during the Council meeting on February 28, 2012; and

WHEREAS, City staff intends to prepare and submit to the County Auditor, by the March 1, 2012 deadline or as soon thereafter as practicable, the Initial Draft ROP Schedule for review, audit, and certification; and

WHEREAS, City staff intends to present the Initial Draft ROP Schedule to the Council for review and approval at the earliest opportunity in March 2012; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, acting in its capacity as the board of the Successor Agency, as follows:

1. The Council finds and determines that the foregoing recitals are true and correct.

2. The Council has received and heard all oral and written objections pertaining to this matter, and all such oral and written objections are hereby overruled.

3. The Council hereby adopts the Second Amended EOP Schedule, which shall be placed on file in the office of the City Clerk as Document No. RR- 307297 .

Commencing upon the date of its effectiveness, the Second Amended EOP Schedule shall supersede the Prior EOP Schedules, except that the Second Amended EOP Schedule shall not invalidate any payments made before such effective date by the Former RDA or the Successor Agency in conjunction with the Prior EOP Schedules.

4. The Chief Financial Officer, or designee, is authorized to appropriate funds as needed in accordance with the Second Amended EOP Schedule.

5. The Mayor, or designee, is authorized to submit the Initial Draft ROP Schedule to the County Auditor by March 1, 2012, or as soon thereafter as practicable, provided that the Initial Draft ROP Schedule is presented to the Council for review and approval at the earliest opportunity in March 2012.

6. The Mayor, or designee, is authorized, on the Successor Agency's behalf, to take all actions necessary and appropriate to carry out and implement the purposes of this Resolution and to fulfill all of the Successor Agency's statutory obligations with respect to the Second Amended EOP Schedule and the Initial Draft ROP Schedule, including, but not limited to, (a) causing the Second Amended EOP Schedule to be posted on the Successor Agency's internet web site, (b) transmitting written notice of the adoption of the Second Amended EOP Schedule to the Oversight Board (promptly after its formation), the County Auditor, the State Controller, and the DOF, (c) transmitting the Initial Draft ROP Schedule to the County Auditor for certification, (d) transmitting the Certified ROP Schedule to the Oversight Board for approval,

(e) transmitting the Approved ROP Schedule to the County Auditor, the State Controller, and the DOF, (f) posting the Approved ROP Schedule on the Successor Agency's internet web site, and (g) designating a representative of the Successor Agency to handle any communications with the Oversight Board, the DOF and other entities in conjunction any required review of the Second Amended EOP Schedule, the Initial Draft ROP Schedule, the Certified ROP Schedule, and the Approved ROP Schedule.

7. The Successor Agency reserves all of its legal rights and remedies with respect to the adoption and implementation of the Second Amended EOP Schedule and the preparation and submittal of the Initial Draft ROP Schedule. The actions taken in this Resolution are not intended as, and shall not constitute, a waiver by the City or the Successor Agency of any of their rights to challenge the validity or effectiveness of all or any portion of AB 26 through administrative or judicial proceedings.

APPROVED: JAN I. GOLDSMITH, City Attorney

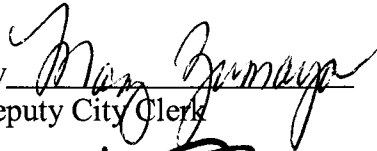
By Kevin Reisch  
Kevin Reisch  
Deputy City Attorney

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Or.Dept:Mayor  
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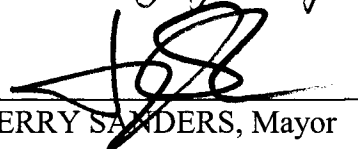


I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of FEB 28 2012.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 3-1-12  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor