

RESOLUTION NUMBER R- 308077

DATE OF FINAL PASSAGE APR 10 2013

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, CONDITIONALLY AUTHORIZING THE PAYMENT OF \$13,244,908, PLUS ACCRUED INTEREST THEREON, TO THE SAN DIEGO COUNTY AUDITOR-CONTROLLER IN ACCORDANCE WITH THE STATE DEPARTMENT OF FINANCE'S FINAL DETERMINATION REGARDING THE DUE DILIGENCE REVIEW OF HOUSING ASSETS

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

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; and

WHEREAS, at the time of the Former RDA's dissolution, the City, in its capacity as the successor agency to the Former RDA (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; and

WHEREAS, the Successor Agency is winding down the Former RDA's affairs in accordance with AB 26, enacted on June 28, 2011, and Assembly Bill 1484 (AB 1484), enacted on June 27, 2012 (collectively, the Dissolution Laws); and

WHEREAS, the Oversight Board has been formed to oversee certain actions and decisions of the Successor Agency in accordance with the Dissolution Laws; and

WHEREAS, the San Diego County Auditor-Controller (County Auditor), the State Controller, and the State Department of Finance (DOF) also possess certain rights and obligations under the Dissolution Laws with respect to the Successor Agency's administration of the Former RDA's operations; 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 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, MGO completed an independent accountant's report dated November 30, 2012 (Original MGO Report), applying the agreed-upon procedures for the Housing DDR of the Successor Agency in accordance with California Health and Safety Code section 34179.5; and

WHEREAS, the Original MGO Report determined that the unencumbered amount of cash and cash equivalents in the Housing Fund available for disbursement to the Taxing Entities is zero dollars; and

WHEREAS, as required by California Health and Safety Code section 34179.6, the Oversight Board held a public comment session regarding the Original MGO Report and the Housing DDR on December 4, 2012, and held a public hearing for an approval vote regarding the results of the Housing DDR on December 11, 2012; and

WHEREAS, pursuant to Resolution No. OB-2012-40 adopted on December 11, 2012, the Oversight Board accepted the Original MGO Report, including the determination regarding the unencumbered amount of cash and cash equivalents in the Housing Fund, and directed Successor Agency staff to transmit a copy of Resolution No. OB-2012-40 and the Original MGO Report to the DOF and the County Auditor; and

WHEREAS, on January 7, 2013, the DOF issued a letter to the Successor Agency pursuant to California Health and Safety Code section 34179.6(d), notifying the Successor Agency that the DOF would make adjustments to the determination of cash and cash equivalents

available for distribution to the Taxing Entities under the Housing DDR and finding an adjusted balance of \$68,083,023 available for disbursement to the Taxing Entities; and

WHEREAS, on January 14, 2013, Successor Agency staff requested to meet and confer with the DOF, in accordance with California Health and Safety Code section 34179.6(e), concerning the DOF's determination on the Housing DDR; and

WHEREAS, during the meet-and-confer process, the DOF accepted Successor Agency staff's proposal that MGO could prepare a revised report on the Housing DDR to reflect updated figures responding to the DOF's comments and conforming to the DOF's methodology set forth in the DOF's letter dated January 7, 2013; and

WHEREAS, MGO completed the revised independent accountant's report dated February 22, 2013 on the Housing DDR (Revised MGO Report), and Successor Agency staff promptly submitted the Revised MGO Report to the DOF; and

WHEREAS, the Revised MGO Report determined that the unencumbered amount of cash and cash equivalents in the Housing Fund available for disbursement to the Taxing Entities is \$7,880,642; and

WHEREAS, based upon its review of the Revised MGO Report, the DOF issued a final determination letter to the Successor Agency, 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 (collectively, the Housing DDR Demand Amount); and

WHEREAS, according to Successor Agency staff's preliminary estimate (which could change based on further analysis), accrued interest of approximately \$32,035 has accumulated on

the sum of \$13,244,908, such that the total Housing DDR Demand Amount is estimated to be approximately \$13,276,943; and

WHEREAS, California Health and Safety Code section 34179.6(f) requires the Successor Agency to remit the Housing DDR Demand Amount to the County Auditor on or before April 4, 2013, which is five working days after the Successor Agency's receipt of the DOF's final determination letter; and

WHEREAS, California Health and Safety Code section 34179.6(h) allows the State of California and the County Auditor to pursue onerous remedies, such as 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, in the event that the Successor Agency fails to make a full, timely payment of the Housing DDR Demand Amount; and

WHEREAS, the City and the Successor Agency are presently seeking an injunction or similar order in the Sacramento County Superior Court (Superior Court) to resist the DOF's demand for payment of the Housing DDR Demand Amount; 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. Subject to Paragraph 2 below, the Chief Financial Officer or designee, acting on the Successor Agency's behalf, is authorized to appropriate and remit the Housing DDR Demand Amount of \$13,244,908 (plus any accrued interest thereon, presently estimated at \$32,035) to the County Auditor, utilizing monies held by the Successor Agency in the Low and Moderate Income Housing Fund or funds otherwise available to the Successor Agency, and contingent upon the City Comptroller's certification that sufficient funds are available.

2. The remittance of the Housing DDR Demand Amount shall occur only if and to the extent that the Superior Court denies the pending request for an injunction or similar order to resist the DOF's demand for payment of the Housing DDR Demand Amount. Any remittance of the Housing DDR Demand Amount by the Successor Agency shall be made under protest and with a full reservation of rights.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Kevin Reisch
Kevin Reisch
Deputy City Attorney

KR:nja
04/04/13
Or.Dept: Civic San Diego
Doc. No. 532664
Comp. R-2013-568, R-2013-569, R-2013-571

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 8 2013.

ELIZABETH S. MALAND
City Clerk

By [Signature]
Deputy City Clerk

Approved: 4/10/13
(date)

[Signature]
BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor