

RESOLUTION NUMBER R- 308146

DATE OF FINAL PASSAGE MAY 16 2013

A RESOLUTION OF THE 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, APPROVING CERTAIN ACTIONS RELATED TO THE SUCCESSOR AGENCY'S ACCEPTANCE OF LOAN FUNDS FROM THE CITY IN AN AMOUNT NOT TO EXCEED \$2,298,467 TO ALLOW 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

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, based upon the DOF's 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 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, 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 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, in Resolution No. R-308077 adopted effective April 10, 2013, the Council approved the Successor Agency's payment of the Housing DDR Demand Amount to the County Auditor, utilizing funds held by the Successor Agency in the Housing Fund and funds otherwise available to the Successor Agency, contingent upon the City Comptroller's certification that sufficient funds are available, and further contingent upon the outcome of the Successor Agency's request for an injunction in the Lawsuit to prevent or delay 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, in light of recent communications from the DOF, it is anticipated that, if the entire Housing DDR Demand Amount is not remitted to the County Auditor promptly, the DOF will cause the County Auditor to reduce the allocation to the Successor Agency from the Redevelopment Property Tax Trust Fund (RPTTF) on June 3, 2013, by the unpaid balance of the Housing DDR Demand Amount; and

WHEREAS, on May 10, 2013, the Successor Agency remitted a 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, the Successor Agency remitted the First Payment Amount 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 (subject to the Council's approval of the second installment payment), given that the Successor Agency possesses insufficient housing funds to pay the entire amount in a single lump sum; and

WHEREAS, under California Health and Safety Code section 34179.6(f), the County Auditor is required to disburse the proceeds of the First Payment Amount to the Taxing Entities in accordance with their respective pro rata shares of general property taxes within five business days after receipt of the First Payment Amount; and

WHEREAS, based on the County Auditor's prior residual balance distributions from the RPTTF, the City's pro rata share has been approximately 21%, such that the City expects to receive its pro rata share of the First Payment Amount in the amount of approximately \$2.3 million (calculated as 21% of \$11,005,779) on or before May 17, 2013; and

WHEREAS, in response to the Court Order, the City and the Successor Agency now propose to enter into the "Loan Agreement for Payment of Housing DDR Amount" (Loan Agreement), a copy of which is included as Attachment C to Staff Report No. 13-06/13-09 presented by Civic San Diego to the Council; and

WHEREAS, consistent with the Court Order, the Loan Agreement requires the City to loan funds to the Successor Agency in an amount not to exceed \$2,298,467 (Loan Amount) to

enable the Successor Agency to make the second (i.e., final) installment payment to the County Auditor toward the Housing DDR Demand Amount; and

WHEREAS, the final Loan Amount will be equal to the actual amount of the second installment payment to the County Auditor, 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 Amount, (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 Amount; and

WHEREAS, the City must disburse the Loan Amount to the Successor Agency promptly after full execution of the Loan Agreement, provided that the City has first received the residual balance distribution from the RPTTF arising from the Successor Agency's remittance of the First Payment Amount to the County Auditor; and

WHEREAS, the source of the funds to be disbursed under the Loan Agreement will be the City's residual balance distributions from the RPTTF received in Fiscal Year 2013, and the residual balance distribution to the City attributable to the First Payment Amount, standing alone, is expected to be roughly equivalent to the Successor Agency's second installment payment toward the Housing DDR Demand Amount (i.e., approximately \$2.3 million); 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 one or more future 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 to the Successor Agency from the RPTTF by the County Auditor,

the Successor Agency must repay the outstanding balance of the Loan Amount plus accrued interest to the City; and

WHEREAS, the Loan Agreement requires the Successor Agency to exercise good faith efforts and to 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; and

WHEREAS, 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, the unpaid portion of the disbursed Loan Amount will be treated as a contribution or grant of funds to the Successor Agency and an expense to the City; 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 hereby approves the Loan Agreement, which provides for the City's disbursement to the Successor Agency of the Loan Amount not to exceed \$2,298,467 to cover the funding shortfall for the Successor Agency's payment to the County Auditor of the second (i.e., final) installment toward the Housing DDR Demand Amount.

2. The Mayor or designee is authorized and directed to execute the Loan Agreement, on the Successor Agency's behalf, and to carry out the Successor Agency's obligations under the Loan Agreement. A fully-executed copy of the Loan Agreement shall be placed on file in the Office of the City Clerk as Document No. RR- 308146

3. The City Comptroller is authorized and directed to accept the City's disbursement to the Successor Agency of funds under the Loan Agreement up to the Loan Amount.

4. The Chief Financial Officer is authorized and directed to cause the proceeds of the Loan Amount to be paid by the Successor Agency to the County Auditor as the second installment toward the Housing DDR Demand Amount, at the earliest opportunity but no later than May 31, 2013.

5. Successor Agency staff is authorized and directed to include the Successor Agency's repayment to the City of the total amount of disbursed funds under the Loan Agreement, plus accrued interest, as an enforceable obligation line item in ROPS 13-14B and any successive ROPS in order to allow repayment of the Loan Amount to the City during the first half of calendar year 2014 or the earliest opportunity thereafter.

6. The Chief Financial Officer is authorized and directed to cause the disbursement of funds from the Successor Agency to the City for repayment of the Loan Amount, provided that the Oversight Board and the DOF have first approved such loan repayment under the applicable ROPS.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Kevin Reisch  
Kevin Reisch  
Chief Deputy City Attorney

KR:nja  
05/10/13  
Or.Dept: Civic San Diego  
Doc. No. 560338  
Comp. R-2013-675




I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 13 2013

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 5/16/13  
(date)

  
BOB FILNER, Mayor

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

\_\_\_\_\_  
BOB FILNER, Mayor

Passed by the Council of The City of San Diego on MAY 13 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherrri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 4 (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

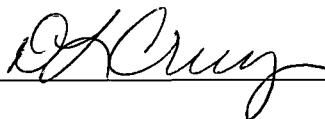
Date of final passage MAY 16 2013

AUTHENTICATED BY:

BOB FILNER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 308146