

RESOLUTION NUMBER R- 308408

DATE OF FINAL PASSAGE SEP 11 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, (i) APPROVING THE FIFTH RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR JANUARY THROUGH JUNE 2014 (ROPS 5), (ii) APPROVING THE ADMINISTRATIVE BUDGET ASSOCIATED WITH ROPS 5, 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

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-307238 adopted by the City 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), elected to serve as the successor agency to the Former RDA, and the City also elected to serve as the successor housing entity to the Former RDA in order to retain housing assets and assume housing responsibilities; and

WHEREAS, at the time of the Former RDA's dissolution on February 1, 2012, 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; 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, pursuant to California Health and Safety Code section 34177(l), Successor Agency staff must prepare a Recognized Obligation Payment Schedule (ROPS) on a forward-looking basis for each six-month fiscal period, showing the payments to be made toward enforceable obligations and the funding source for the payments; and

WHEREAS, Successor Agency staff has prepared the proposed fifth ROPS covering the period from January 1, 2014 through June 30, 2014, also known as ROPS 13-14B under the DOF's new naming convention (ROPS 5), a copy of which is included as Attachment A to Staff Report No. CSD-13-15 dated September 4, 2013 (Staff Report); and

WHEREAS, as required by the DOF, ROPS 5 reflects the DOF's final determinations in letters dated December 27, 2012 and May 17, 2013, that certain items listed in the third ROPS covering the period from January 1, 2013 through June 30, 2013 (ROPS 3) and the fourth ROPS covering the period from July 1, 2013 through December 31, 2013 (ROPS 4), respectively, are not enforceable obligations and cannot be paid using redevelopment funds in the future, although certain text in the "Notes" section of ROPS 5 reserves the right of the Successor Agency and the City to continue objecting to aspects of the DOF's determinations in ROPS 3 and ROPS 4 with which they disagree; and

WHEREAS, as further required by the DOF, ROPS 5 reconciles any discrepancies between estimated and actual payments during the ROPS 3 time period covering January 1, 2013 through June 30, 2013; and

WHEREAS, the DOF will require use of a new electronic template for submission of ROPS 5, but did not provide the Successor Agency with access to the new electronic template until the latter half of August 2013; and

WHEREAS, Successor Agency staff has prepared ROPS 5 consistent with the template used for ROPS 4 to avoid delays that would jeopardize the ability to meet the deadline for submission of ROPS 5, and is now in the process of transferring the data for the hundreds of line items in ROPS 5 from the older ROPS template to the new ROPS template and adding new information called for in the new ROPS template as quickly as possible; and

WHEREAS, California Health and Safety Code section 34177(m) requires the Successor Agency to obtain the Oversight Board's approval of ROPS 5 and to submit ROPS 5 to the DOF by October 1, 2013, and subjects both the City and the Successor Agency to specified civil penalties in the event that ROPS 5 is not timely submitted to the DOF; and

WHEREAS, the anticipated date for the County Auditor's semi-annual distribution of property taxes generated in the redevelopment project areas to the Successor Agency and local taxing entities with respect to ROPS 5 is January 2, 2014 (ROPS 5 Distribution Date); and

WHEREAS, California Health and Safety Code section 34179(h) provides the DOF with a review period on ROPS 5, during which the DOF will make a determination on the amount of enforceable obligations and the proposed funding sources and may eliminate or modify any item on ROPS 5 prior to its approval; and

WHEREAS, based on California Health and Safety Code section 34177(m), the Successor Agency may, within five business days after the DOF's determination on ROPS 5, request additional review by the DOF and an opportunity to meet and confer with the DOF on disputed items in ROPS 5, and the DOF must notify the Successor Agency and the County Auditor regarding the outcome of its additional review at least 15 days before the ROPS 5 Distribution Date; and

WHEREAS, California Health and Safety Code section 34182.5 enables the County Auditor to deliver written notice at least 60 days before the ROPS 5 Distribution Date, objecting to the inclusion of any items in ROPS 5 that are not demonstrated to be enforceable obligations, and further enables the Oversight Board, in response to the County Auditor's objection, to refer any disputed ROPS 5 item to the DOF for a determination of what will be approved for inclusion in ROPS 5; and

WHEREAS, the San Diego Unified School District and the San Diego Community College District have claimed they are owed a cumulative total amount of \$817,501 related to alleged underpayments under tax-sharing agreements for five consecutive fiscal years from 2006 through 2010 (School District Tax-Sharing Claims); and

WHEREAS, the Successor Agency has included a total outstanding obligation in the amount of the School District Tax-Sharing Claims in line items 541 through 545 on prior ROPS; however, Successor Agency staff and the City Attorney's Office continue to evaluate the legitimacy of the School District Tax-Sharing Claims; and

WHEREAS, California Health and Safety Code section 34177(j) requires the Successor Agency to prepare, and to submit to the Oversight Board for approval, an administrative budget for each upcoming six-month fiscal period, estimating the administrative costs to be expended during the applicable fiscal period, identifying the proposed sources of payment for such administrative costs, and identifying proposed arrangements for administrative and operations services provided by a city or other entity; and

WHEREAS, Successor Agency staff has prepared a proposed six-month Administrative and Project Management Budget for the Successor Agency covering the period of January 1, 2014 through June 30, 2014 (ROPS 5 Budget), a copy of which is included as Attachment B to the Staff Report; and

WHEREAS, the ROPS 5 Budget includes the total amount of \$3,506,000, of which \$1,906,000 is allocated to administrative costs and \$1,600,000 is allocated to project-specific costs and litigation costs, as such categories of costs are described in California Health and Safety Code section 34171(b); and

WHEREAS, the ROPS 5 Budget contemplates the Successor Agency's payment of funds to the City in exchange for the provision of certain services by the City and a City-owned nonprofit public benefit corporation, namely Civic San Diego, related to winding down the Former RDA's affairs; and

WHEREAS, California Health and Safety Code section 34179(p) states that decisions made by the Oversight Board within its purview will supersede decisions made by the Successor Agency or Successor Agency staff; and

WHEREAS, the Oversight Board's decisions regarding approval of ROPS 5 and the administrative costs in the ROPS 5 Budget will not become effective until after those decisions have been approved or deemed approved by the DOF in accordance with California Health and Safety Code section 34179(h); and

WHEREAS, it is thus assumed for purposes of this Resolution that any modifications to ROPS 5 or the ROPS 5 Budget made by the Oversight Board or the DOF will be binding on the Successor Agency, subject to the outcome of any meet-and-confer process on ROPS 5 initiated by Successor Agency staff with the DOF; and

WHEREAS, under Charter section 265(i), resolutions adopted by the City Council are not subject to veto pending an election to fill the vacancy in the Office of the Mayor, but the Council President, serving as the interim Mayor during the period of vacancy, generally has the authority to approve resolutions in circumstances where expeditious approval is necessary to meet a legal requirement imposed by a court or another governmental agency; and

WHEREAS, it is anticipated that ROPS 5 and the ROPS 5 Budget will be presented to the Oversight Board imminently, and as early as September 17, 2013, in order to satisfy the Oversight Board's quorum requirements, to accommodate the Oversight Board's normal protocol of holding two successive meetings to consider each ROPS, and to meet the statutory deadline of October 1, 2013, for submission of the approved ROPS 5 and the approved ROPS 5 Budget to the DOF; and

WHEREAS, in light of these circumstances, it is requested that the Council President approve this Resolution expeditiously so that it will become effective before ROPS 5 and the ROPS 5 Budget need to be presented to the Oversight Board; and

WHEREAS, all references in the authorized action items of this Resolution to the “Mayor” are intended to refer to the elected Mayor or the interim Mayor, as may be applicable upon the occurrence of each authorized action item; 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 approves ROPS 5 covering the period of time from January 1, 2014 through June 30, 2014, which shall be placed on file in the office of the City Clerk as Document No. RR- 308408 - 1
4. The Mayor, or designee, is authorized and directed, 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 ROPS 5, including, but not limited to, (a) submitting ROPS 5 to the Oversight Board, the County Administrative Officer, the County Auditor, the State Controller, and the DOF, (b) posting ROPS 5 on the Successor Agency’s internet web site, (c) making any necessary adjustments and adding factual information to ROPS 5 based on any changes made by the DOF to the mandatory ROPS template, provided that the substantive content of ROPS 5 remains substantially the same as approved by the Council, and (d) requesting additional review after receipt of the DOF’s

initial determination on ROPS 5 and engaging in a meet-and-confer process with the DOF on ROPS 5 as may be deemed by the Mayor, or designee, to be in the best interests of the Successor Agency or the City, or both.

5. Successor Agency staff is authorized to show a payment of all or any portion of the School District Tax-Sharing Claims on ROPS 5 to the extent that Successor Agency staff, in consultation with the City Attorney's Office, determines that the School District Tax-Sharing Claims are legitimate and have been substantiated by appropriate documentation.

6. The Chief Financial Officer, or designee, is authorized and directed to appropriate and expend funds as needed in accordance with ROPS 5, contingent upon approval of ROPS 5 by the Oversight Board and the DOF.

7. The Council adopts the ROPS 5 Budget, which shall be placed on file in the office of the City Clerk as Document No. RR- 308408 -2

8. The Mayor, or designee, is authorized and directed, 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 ROPS 5 Budget.

9. The Chief Financial Officer, or designee, is authorized and directed to appropriate and expend funds as needed in accordance with the ROPS 5 Budget, utilizing the funding sources identified therein, contingent upon approval of the ROPS 5 Budget by the Oversight Board and the DOF.

10. The Successor Agency and the City reserve all legal rights and remedies with respect to the approval and implementation of ROPS 5 and the ROPS 5 Budget. The actions taken in this Resolution are not intended as, and shall not constitute, a waiver by the Successor



Agency or the City of any of their rights to challenge the validity or effectiveness of all or any portion of the Dissolution Laws through administrative or judicial proceedings.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Kevin Reisch  
Kevin Reisch  
Chief Deputy City Attorney

KJR:nja  
09/04/13  
Or.Dept: Civic San Diego  
Document No. 623010

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of SEP 09 2013

ELIZABETH S. MALAND  
City Clerk

By Mary Zumaiga  
Deputy City Clerk

Approved pursuant to Charter section 265(i):

9/11/2013  
(date)

Godd Gloria  
GODD GLORIA, Council President

Passed by the Council of The City of San Diego on SEP 09 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 type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Myrtle Cole      | <input checked="" 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 checked="" type="checkbox"/> | <input type="checkbox"/> | <input 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 SEP 11 2013.

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT  
as interim Mayor of The City of San Diego, California.

(Seal)

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

By *Mary Zimm*, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 308408