

RESOLUTION NUMBER R- 308578

DATE OF FINAL PASSAGE NOV 21 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 \$21,066,770 AND THE SUCCESSOR AGENCY'S PAYMENT OF \$165,900,262, 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 NON-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, among other things, the Dissolution Laws require the County Auditor to administer the Redevelopment Property Tax Trust Fund (RPTTF), which consists of certain property taxes generated from the Former RDA's redevelopment project areas, and to distribute RPTTF monies on a semi-annual basis in conjunction with each six-month Recognized Obligation Payment Schedule (ROPS) of the Successor Agency; 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, including the unencumbered balances of the Low and Moderate Income Housing Fund of the Former RDA (Housing Funds) and the unencumbered balances of all other funds of the Former RDA (Non-Housing Funds); 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 account balances consisting of Housing Funds (Housing DDR) and Non-Housing Funds (Non-Housing DDR); 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, with respect to the Housing DDR, the DOF issued a final determination letter in March 2013, finding an unencumbered balance of \$13,244,908, plus accrued interest, of Housing Funds available for disbursement to the Taxing Entities, and the Successor Agency paid this full amount to the County Auditor in two installments in May 2013 utilizing a combination of City loan funds in the amount of \$2,298,467 (issued in response to a court order denying injunctive relief on the basis of available City loan funds) and Successor Agency funds; and

WHEREAS, with respect to the Non-Housing DDR, MGO completed an independent accountant's report dated April 24, 2013 (MGO Report), applying the agreed-upon procedures for the Non-Housing DDR of the Successor Agency in accordance with California Health and Safety Code section 34179.5; and

WHEREAS, the MGO Report determined that the unencumbered amount of Non-Housing Funds available for disbursement to the Taxing Entities is \$62,776,180; and

WHEREAS, as required by California Health and Safety Code section 34179.6, the Oversight Board held a public comment session regarding the MGO Report and the Non-

Housing DDR on May 14, 2013, and held a public hearing for an approval vote regarding the results of the Non-Housing DDR on May 28, 2013; and

WHEREAS, pursuant to Resolution No. OB-2013-4 adopted on May 28, 2013, the Oversight Board accepted the MGO Report, including the determination regarding the unencumbered amount of Non-Housing Funds of \$62,776,180, and directed Successor Agency staff to transmit a copy of Resolution No. OB-2013-4 and the MGO Report to the DOF and the County Auditor; and

WHEREAS, on August 29, 2013, the DOF issued a preliminary determination 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 Non-Housing DDR and finding an adjusted balance of \$132,986,254 in unencumbered Non-Housing Funds available for disbursement to the Taxing Entities; and

WHEREAS, on September 6, 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 Non-Housing DDR; and

WHEREAS, during the meet-and-confer process and for reasons explained in Staff Report No. CSD-13-17 / CSD-13-11 accompanying this Resolution (Staff Report), Successor Agency staff asked the DOF to increase the Non-Housing DDR demand amount to capture any presently-unexpended funding sources that the Successor Agency had retained for expenditure during the ROPS 3 time period (January through June 2013); and

WHEREAS, upon completion of the meet-and-confer process, the DOF issued a final determination letter dated October 31, 2013, as supplemented by an e-mail sent on November 1,

2013, concluding that the unencumbered amount of Non-Housing Funds available for distribution to the Taxing Entities is \$165,900,262, plus any accrued interest on that sum that has accumulated while in the possession of the recipient (collectively, the Non-Housing DDR Demand Amount); and

WHEREAS, according to Successor Agency staff's preliminary estimate (which could change based on further analysis), accrued interest of \$1,348,563 will have accumulated on the sum of \$165,900,262 through November 30, 2013, such that the total Non-Housing DDR Demand Amount is estimated to be \$167,248,825; and

WHEREAS, California Health and Safety Code section 34179.6(f) requires the Successor Agency to remit the Non-Housing DDR Demand Amount to the County Auditor on or before November 7, 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 Non-Housing DDR Demand Amount; and

WHEREAS, the DOF's final determination on the Non-Housing DDR includes the compelled reversal (or "claw-back") of \$21,066,770 in payments previously made by the Former RDA to the City or related entities during the time period from January 1, 2011 through January 31, 2012 (collectively, the Claw-Back Amount), including:

- a. Petco Park bond debt service payment of \$11,322,000;
- b. Convention Center Phase II bond debt service payment of \$2,000,000;

- c. Community Development Block Grant annual repayment of \$3,294,500;
- d. City long-term debt payments of \$1,007,407;
- e. NTC section 108 loan payments of \$211,422;
- f. Mount Hope section 108 loan payment of \$35,170;
- g. City project payments of \$196,271; and
- h. Convention Center Phase III loan disbursement of \$3,000,000; and

WHEREAS, consistent with the approach used for payment of a portion of the amount demanded under the Housing DDR, the City and the Successor Agency now propose to enter into the “Loan Agreement for Payment of Non-Housing DDR Amount” (Loan Agreement), a copy of which is included as Attachment F to the Staff Report, to enable the Successor Agency to pay the portion of the Non-Housing DDR Demand Amount constituting the Claw-Back Amount; and

WHEREAS, the Loan Agreement requires the City to loan funds to the Successor Agency in an amount not to exceed \$21,066,770 (Loan Amount) to be used by the Successor Agency toward payment of the Non-Housing DDR Demand Amount to the County Auditor; and

WHEREAS, the source of the funds to be disbursed under the Loan Agreement will be the City’s General Fund Reserves, although the City’s General Fund is expected to receive gross revenues of approximately \$34.9 million, and net revenues of approximately \$13.8 million (after taking into account the Loan Amount of approximately \$21.1 million), when the County Auditor distributes the Non-Housing DDR payment amount of approximately \$167.2 million to the Taxing Entities, including the City’s pro rata share of approximately 21 percent; 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; 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, 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, as discussed above, the statutory deadline for the Successor Agency's payment of the Non-Housing DDR Demand Amount elapsed on November 7, 2013, and the

State of California and the County Auditor are expected to pursue onerous monetary remedies against the City or the Successor Agency, or both, if this full amount is not paid promptly; 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 the State of California and the County Auditor pursue onerous monetary remedies against City or the Successor Agency, or both, to collect the Non-Housing DDR Demand Amount; 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 Council President (during the period of vacancy in the Office of the 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 hereby approves the Loan Agreement, which provides for the City’s disbursement to the Successor Agency of the Loan Amount not to exceed \$21,066,770 to cover the portion of the Non-Housing DDR Demand Amount attributable to the DOF’s compelled reversal of payments previously made by the Former RDA to the City or related entities during the time period from January 1, 2011 through January 31, 2012.

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- 308577

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. 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 14-15A and any successive ROPS in order to allow repayment of the Loan Amount to the City during the second half of calendar year 2014 or the earliest opportunity thereafter.

5. 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.

6. The Chief Financial Officer, acting on the Successor Agency's behalf, is authorized and directed to appropriate and remit the Non-Housing DDR Demand Amount of \$165,900,262 (plus any accrued interest thereon, presently estimated at \$1,348,563) to the County Auditor, utilizing Non-Housing Funds held by the Successor Agency or funds otherwise available to the Successor Agency, including the Loan Amount, and contingent upon the City Comptroller's certification that sufficient funds are available. The Successor Agency's remittance of the Non-Housing DDR Demand Amount to the County Auditor shall be made under protest and with a full reservation of rights.

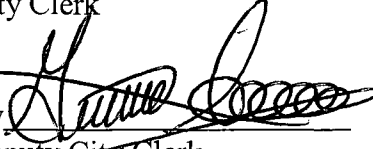
APPROVED: JAN I. GOLDSMITH, City Attorney

By Kevin Reisch  
Kevin Reisch  
Chief Deputy City Attorney

KR:nja  
11/14/13  
Or.Dept: Civic San Diego  
Doc. No. 674633  
Comp. R-2014-299

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 11/21/13.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved pursuant to Charter section 265(i):

11/21/13  
(date)

  
TODD GLORIA, Council President

NOV 21 2013

Passed by the Council of The City of San Diego on \_\_\_\_\_, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri 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"/>
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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

NOV 21 2013

Date of final passage \_\_\_\_\_.

(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:

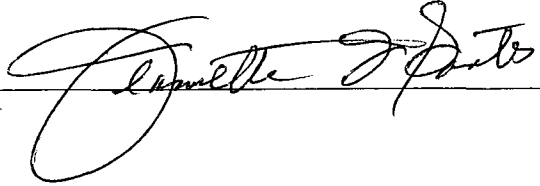
TODD GLORIA, COUNCIL PRESIDENT

as interim Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308578