

RESOLUTION NUMBER R- 309157

DATE OF FINAL PASSAGE JUL 30 2014

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING CERTAIN ACTIONS RELATED
TO THE REINSTATEMENT OF A LOAN AGREEMENT
REGARDING VARIOUS LONG-TERM LOANS.

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 subsequent legislation (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, the Dissolution Laws require the Successor Agency to prepare on a forward-looking basis, and to submit for approval by the Oversight Board and the DOF, a Recognized Obligation Payment Schedule (ROPS) identifying payments owed by the Successor Agency to third parties toward enforceable obligations during each upcoming six-month period; and

WHEREAS, under the Dissolution Laws, the County Auditor administers and makes semi-annual distributions of monies from the Redevelopment Property Tax Trust Fund (RPTTF), which is comprised of incremental property taxes generated in the City's redevelopment project areas; and

WHEREAS, California Health and Safety Code (Code) section 34191.4(b) enables the Successor Agency and the City to reinstate, subject to certain conditions and on modified terms, any loan agreements between the Former RDA and the City that the State previously invalidated as a result of the general rule in Code section 34178 that purports to invalidate most agreements, contracts, or arrangements between any redevelopment agency and its sponsoring city; and

WHEREAS, Code section 34191.4(b)(1), as interpreted by the DOF, requires the following conditions to be satisfied before reinstatement of an invalidated loan may occur: (i) the Successor Agency must have obtained the finding of completion from the DOF pursuant to Code section 34179.7 (the Successor Agency obtained this finding on December 2, 2013); (ii) the Oversight Board must adopt a resolution that both approves the reinstated loan as an enforceable obligation and makes a finding to the effect that the invalidated loan was for legitimate

redevelopment purposes; and (iii) the DOF must approve the Oversight Board's pertinent resolution; and

WHEREAS, Code section 34191.4(b)(2), as interpreted by the DOF, imposes several modified terms and limitations on a reinstated loan, such as: (a) an annual "cap" on the maximum repayment amount on all reinstated loans in any given fiscal year, equal to fifty percent (50%) of the increase between the residual balance amount distributed to the local taxing entities in the 2012-13 base fiscal year and the actual residual balance amount distributed to the local taxing entities during any subsequent fiscal year (50% Increase Formula); (b) the retroactive recalculation of accumulated interest on the remaining principal amount of the loan from the date of loan origination at the interest rate applicable to funds deposited into the Local Agency Investment Fund (LAIF Rate); (c) the deduction of twenty percent (20%) of any reinstated loan payment from the loan payment amount and the transfer of this deducted amount to the City's Low and Moderate Income Housing Asset Fund; and (d) the need for repayment of the reinstated loan in accordance with a defined schedule over a reasonable term of years, commencing no earlier than the 2014-15 fiscal year; and

WHEREAS, the City and the Former RDA entered into that certain Loan Agreement for Long-Term Debt dated March 1, 2011, on file as City Clerk Document No. RR-306635 and Redevelopment Agency Secretary Document No. D-04638 (Original Loan Agreement); and

WHEREAS, the Original Loan Agreement memorializes the Former RDA's preexisting obligation to repay various types of long-term debt (Long-Term Loans) owed to the City, in the total amount of \$193,759,073, including principal in the amount of \$65,795,767 and accrued interest through June 30, 2011, in the amount of \$127,963,306; and

WHEREAS, at different intervals in time commencing in the late 1970s, the City issued the Long-Term Loans to the Former RDA to assist with the formation of 16 of the 17 redevelopment project areas (excluding Horton Plaza) throughout the City (collectively, Project Areas) and the implementation of legitimate redevelopment projects, activities, and programs in the Project Areas; and

WHEREAS, the City derived the funding for the Long-Term Loans from multiple sources, as described in Exhibit A to the Original Loan Agreement, including Community Development Block Grants, federal Section 108 loans, industrial development bonds, sales tax revenues, General Fund monies, and other sources; and

WHEREAS, the Former RDA's repayment obligation for the Long-Term Loans has been confirmed consistently in various historical documents, including Council resolutions, annual financial statements of the City and the Former RDA, internal records maintained by the Office of the City Comptroller, and annual statements of indebtedness filed by the Former RDA; and

WHEREAS, Section 2(a) of the Original Loan Agreement required the Former RDA to repay the Long-Term Loans to the City over a 30-year period, with each annual payment to be determined as part of the annual budget processes of the Former RDA and the City; and

WHEREAS, the Former RDA made only one annual payment to the City under the Original Loan Agreement, in the amount of \$1,007,407 in August 2011, before the DOF invalidated the Original Loan Agreement as part of the DOF's review of the third ROPS in December 2012; and

WHEREAS, in a letter dated October 31, 2013, the DOF compelled the City to return the annual payment of \$1,007,407 to the Successor Agency as part of the due diligence review of non-housing assets, and the City promptly returned these funds to the Successor Agency; and

WHEREAS, the Successor Agency and the City now propose to enter into that certain Reinstated Loan Agreement Pertaining to Long-Term Miscellaneous Debt (Reinstated Loan Agreement), a copy of which is included as Attachment A to Staff Report No. CSD-14-08 / CSD-14-14 dated July 23, 2014 accompanying this Resolution; and

WHEREAS, the Reinstated Loan Agreement contemplates the Successor Agency's repayment of a total amount of \$66,411,031.26 (Reinstated Loan Amount) to the City utilizing monies available from semi-annual RPTTF distributions corresponding to each six-month ROPS after applying the 50% Increase Formula; and

WHEREAS, the Reinstated Loan Amount equals the current principal balance of the Long-Term Loans of \$65,795,766.93, plus accumulated interest of \$615,264.33 based on the recalculation of interest at the most recently available (June 2014) LAIF Rate of 0.228% from the date of the Original Loan Agreement (March 1, 2011) through the anticipated date of the Oversight Board meeting for approval of the Reinstated Loan Agreement (August 6, 2014); and

WHEREAS, as acknowledged in the Reinstated Loan Agreement, nearly all of the Long-Term Loans originated long before the execution date of the Original Loan Agreement, dating back to the late 1970s, but for the sake of convenience only, the parties have agreed to recalculate accrued interest at the LAIF Rate on the entire balance shown in the Original Loan Agreement commencing on March 1, 2011, rather than on the separate balance of each of dozens of constituent Long-Term Loans from their respective dates of origination; and

WHEREAS, Recital H and Section 4(f) of the Reinstated Loan Agreement provide that the Reinstated Loan Amount may be adjusted, based on consultation between the Successor Agency and the DOF, to reflect two factors: (i) any discrepancy between the June 2014 LAIF Rate and the prevailing LAIF Rate as of the date on which the Oversight Board has approved the

Reinstated Loan Agreement; and (ii) any discrepancy between the anticipated date of the Oversight Board meeting for approval of the Reinstated Loan Agreement (August 6, 2014) and the actual date on which the Oversight Board has approved the Reinstated Loan Agreement; and

WHEREAS, assuming that the Reinstated Loan Agreement is approved by the Oversight Board and the DOF, the Reinstated Loan Amount shall continue to accrue interest at the LAIF Rate, as such rate is adjusted on a quarterly basis, until fully repaid; and

WHEREAS, the Reinstated Loan Agreement requires the Successor Agency to identify the Reinstated Loan Agreement, including the full repayment of the Reinstated Loan Amount plus accrued interest, as an enforceable obligation in the seventh ROPS covering the time period of January through June 2015 (ROPS 14-15B) and to request an allocation of property taxes from the residual balance of the RPTTF for this purpose on a semi-annual basis in ROPS 14-15B and in each ensuing ROPS to the extent that sufficient funds are available in the residual balance under the 50% Increase Formula; and

WHEREAS, the Reinstated Loan Agreement requires the Successor Agency to exercise good faith efforts to repay the Reinstated Loan Amount by the end of the tenth full fiscal year after the effective date of the Reinstated Loan Agreement, or as soon thereafter as may be practicable; provided, however, that the Successor Agency's actual repayments to the City in any given fiscal year shall take into account both (i) the available residual balance funds under the 50% Increase Formula in any given fiscal year and (ii) the potential reinstatement of other invalidated loan agreements between the City and the Former RDA and the corresponding need for a funding source for repayment of such other reinstated agreements; and

WHEREAS, consistent with Code section 34191.4(b), the Reinstated Loan Agreement requires the Successor Agency to deduct twenty percent (20%) of any semi-annual loan

repayment from the loan repayment amount and to transfer this deducted amount to the City's Low and Moderate Income Housing Asset Fund to be used by the City, as the housing successor to the Former RDA, for valid affordable housing purposes; and

WHEREAS, the effectiveness of the Reinstated Loan Agreement shall be contingent upon the approval of the Reinstated Loan Agreement as an enforceable obligation by the Oversight Board and the DOF, as well as the continued availability of sufficient RPTTF distributions to make installment payments toward the Reinstated Loan Amount; and

WHEREAS, the City acknowledges in the Reinstated Loan Agreement that, to the extent that sufficient RPTTF distributions are unavailable to the Successor Agency despite its exercise of good faith efforts, the Reinstated Loan Amount may not ultimately be repaid in full; and

WHEREAS, the Long-Term Loans carried out legitimate redevelopment purposes in that they aided the Former RDA's continued effort to revitalize, and eliminate blight within, the Project Areas and to achieve the objectives of the approved redevelopment plans and five-year implementation plans for the Project Areas; and

WHEREAS, the Former RDA used the proceeds of the Long-Term Loans to assist with the formation of the Project Areas and the implementation of legitimate redevelopment projects, activities, and programs in the Project Areas; and

WHEREAS, by way of example only, the Former RDA used certain proceeds of the Long-Term Loans to acquire sites for redevelopment purposes and to complete capital improvements and infrastructure projects in the Project Areas, leading to improved physical conditions, increased property values, and greater incentives for the infusion of private capital investment in the Project Areas; and

WHEREAS, the Long-Term Loans were authorized under the California Community Redevelopment Law, including the following provisions that preceded the enactment of the Dissolution Laws: (i) Code section 33220, which authorized any public body to take various actions to aid and cooperate in a redevelopment agency's planning, construction, or operation of redevelopment projects; and (ii) Code section 33601, which authorized a redevelopment agency to borrow funds from any public agency for any redevelopment project within its area of operation; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

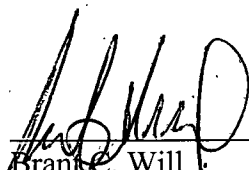
1. The Council finds and determines that the foregoing recitals are true and correct.
2. The Council received and heard any and all oral and written objections relating to the Reinstated Loan Agreement, and to other matters pertaining to this transaction, and all such oral and written objections are overruled.
3. The Council finds that the Long-Term Loans memorialized in the Original Loan Agreement were for legitimate redevelopment purposes.
4. The Council approves the Reinstated Loan Agreement, which requires the Successor Agency's repayment to the City of the Reinstated Loan Amount of \$66,411,031.26, utilizing monies available through the semi-annual RPTTF distributions corresponding to each ROPS, provided that the Reinstated Loan Amount may be adjusted per Recital H and Section 4(f) of the Reinstated Loan Agreement.
5. The Mayor or designee is authorized and directed to execute the Reinstated Loan Agreement, on the City's behalf, and to carry out the City's obligations under the Reinstated Loan Agreement. A fully-executed copy of the Reinstated Loan Agreement shall be filed in the Office of the City Clerk as Document No. RR- 309157

6. The City Comptroller is authorized to accept the Successor Agency's transfer of semi-annual installment payments of the Reinstated Loan Amount to the City under the Reinstated Loan Agreement until the Reinstated Loan Amount has been fully repaid and to allocate all such installment payments as follows: (a) twenty percent (20%) to the City's Low and Moderate Income Housing Asset Fund (Fund No. 200708), to be used by the City, as housing successor to the Former RDA, for valid affordable housing purposes; and (b) eighty percent (80%) to the various City funds associated with the Long-Term Loans, consistent with the loan funding sources identified in Exhibit A to the Original Loan Agreement.

7. The City reserves all of its legal rights and remedies with respect to the State's prior invalidation of the Original Loan Agreement. The actions taken in this Resolution are not intended as, and shall not constitute, a waiver by the City or the Successor Agency of their right to challenge, in any pending or future litigation, the State's invalidation of the Original Loan Agreement.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

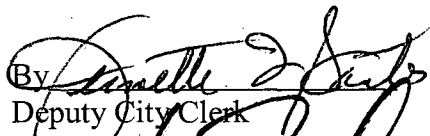



Brant C. Will
Deputy City Attorney

BCW:jdf
7/22/14
Or.Dept: Civic San Diego
Doc. No. 825692
Comp. R-2015-48

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 28 2014.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk


KEVIN L. FAULCONER, Mayor

Approved: 7/30/14
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

JUL 28 2014

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"/>
Ed Harris	<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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

JUL 30 2014

Date of final passage _____

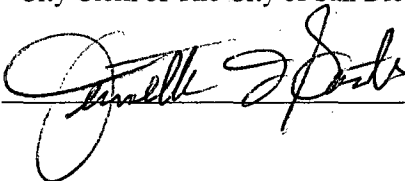
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
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- <u>309157</u>