

ITEM 1

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: October 8, 2012

SUBJECT: Report from the Successor Agency Regarding Request for Authorization to Enter into Escrow Agreements Related to Successor Agency Loans and to Transfer the Loan Funds into Escrow Accounts.

CONTACT/PHONE NUMBER: David Graham/236-6980

DESCRIPTIVE SUMMARY OF ITEM:

Adoption of a resolution:

Authorizing the Successor Agency to enter into escrow agreements related to the disbursement of Successor Agency loans when such loans are required pursuant to enforceable obligations included in any approved Recognized Obligation Payment Schedule (ROPS), and to transfer the outstanding amount of the loan funds into escrow accounts for disbursement by an independent escrow agent according to the terms of the enforceable obligations.

STAFF RECOMMENDATION:

Approve proposed action.

DISCUSSION:

Background

The Successor Agency is in the process of winding down the operations of the former Redevelopment Agency of the City of San Diego ("Former RDA") in accordance with Assembly Bill xl 26 (the "Dissolution Act"), enacted on June 28, 2011, and Assembly Bill 1484 ("AB 1484"), enacted on June 27, 2012 (collectively, the "Dissolution Laws"). On January 10, 2012, the City Council designated the City of San Diego ("City") to serve as the Successor Agency to the Former RDA for purposes of winding down the Former RDA's operations.

At the Oversight Board meeting of May 31, 2012, the Oversight Board approved the Second ROPS covering the period from July 2012 to December 2012 (ROPS 2). On August 28, 2012, and September 18, 2012, the Third ROPS (ROPS 3), covering the period from January 1 through June 30, 2013, was approved by the Oversight Board.

As part of the state budget package, on June 27, 2012, the Legislature passed and the Governor signed AB 1484, the primary purpose of which was to make technical and substantive amendments to the Dissolution Act based on experience to date at the state and local levels implementing the Dissolution Act. AB 1484 in several ways clarifies the role of a Successor

Agency to conduct certain activities and also authorizes a Successor Agency to perform activities not expressly stated in the Dissolution Act.

One such clarification, set forth in Health and Safety Code Section 34177(c), requires the Successor Agency to perform obligations required pursuant to any enforceable obligation. Despite the clear mandate of Section 34177(c), the Dissolution Laws are generally unclear as to whether the Successor Agency can take discretionary actions related to performance of enforceable obligations, and enter into related agreements, without Oversight Board authorization. For that reason, the Successor Agency is requesting, in an abundance of caution, that the Oversight Board confirm that the Successor Agency is authorized to enter into escrow agreements related to disbursement of Successor Agency loans and transfer the outstanding amount of the loan funds into escrow accounts to facilitate financing required pursuant to enforceable obligations. The requested action relates to requests received by the Successor Agency from primary construction and permanent lenders for projects that involve Successor Agency loans. These lenders have requested that the Successor Agency deposit its loan funds into an escrow account pledged to the project, as a condition of and prior to, the primary lender's funding of their loans for the projects.

Lending institutions typically will not finance project construction until the developer has all other funding approvals in place. Prior to the dissolution of the Former RDA, authorization of the loan by the Former RDA's Board and issuance of a Comptroller's Certificate were sufficient evidence of the availability of redevelopment funds for project financing. Any subsequent escrow instructions, disbursement agreements, loan draw approvals, and construction monitoring would be administered by Former RDA staff in accordance with the terms of the agreement for the project. Now that RDA's have been dissolved, lenders are requiring the additional step of transfer of the Successor Agency's loan funds into an escrow account to provide additional assurance that the funds will be available for the project going forward, and will not be subject to any claw-back or withdrawal of funds based upon the Dissolution Laws or the demands of state entities.

The proposed escrow agreements would provide that the Successor Agency shall deposit funds encumbered for the enforceable obligation with its selected escrow account holder, while maintaining control of funding disbursements for the project according to the terms of the enforceable obligation agreement for the project. They would not increase the funding obligations of the Successor Agency or change the Successor Agency's disbursement schedule and procedures. The same Disbursement Agreement included as an attachment to the underlying enforceable obligation agreements would still govern the disbursements, and construction monitoring would continue to be conducted to ensure work is completed to Successor Agency satisfaction. Therefore, the proposed actions related to escrow accounts would not have any substantial adverse impact on the Successor Agency's financial interests.

Staff anticipates that the material terms of the escrow agreements will cover the following main topics: 1) timing for the establishment of the escrow account and deposit of outstanding Successor Agency loan funds; 2) terms and schedule for disbursement of the outstanding Successor Agency loan funds pursuant to the underlying enforceable obligation; 3) permitted

investments for funds deposited into the escrow account; 4) powers and responsibilities of the escrow agent; 5) Borrower's responsibility for escrow costs/fees; and, 6) return of interest proceeds to Successor Agency.

Two examples of projects for which lenders have requested deposit of Successor Agency loan funds into an escrow account are the COMM22 mixed-use development with affordable housing and retail in the Logan Heights neighborhood, and the 9th and Broadway affordable housing with retail development in the East Village neighborhood. Both developments are in the approved ROPS as enforceable obligations of the Successor Agency and include housing for extremely-low, very-low, and low-income families, as well as permanent supportive housing units for formerly homeless or those at risk of becoming homeless. Close of escrow for COMM22 and 9th & Broadway are scheduled to occur within the next few months, potentially before the transfer of housing assets to the San Diego Housing Successor Agency is finalized.

This same issue regarding Successor Agency loans has arisen with projects elsewhere in California, and other Successor Agencies have utilized escrow agreements in the same way described in this report to satisfy the senior lenders' requirements while maintaining control of funding disbursements.

While the above examples involve execution of an escrow agreement and establishment of an escrow account prior to or simultaneous with the loan closing, situations may arise where establishment of an escrow account for the same purposes is requested by a senior lender involved in a refinancing. Therefore, the requested authorization from the Oversight Board is worded so as to include authorization to execute escrow agreements and transfer outstanding funds into escrow accounts for Successor Loans that are already partially disbursed.

The proposed escrow agreements and escrow accounts would facilitate performance of obligations required pursuant to applicable enforceable obligation agreements without changing the Successor Agency loan amounts or the schedules for disbursement of the Successor Agency loan funds to developers. The proposed authorization from the Oversight Board would allow the Successor Agency to administer its enforceable obligation loans consistent with the terms of the applicable enforceable obligation agreement and would not have any substantial adverse impact on the financial interests of the Successor Agency.

The Successor Agency anticipates it will receive additional requests of this nature in the future, some of which will be related to non-housing assets and obligations. Therefore, the Successor Agency is requesting a "confirmation of authority" to enter into escrow agreements and transfer funds to escrow accounts for disbursement according to the terms of enforceable obligations, rather than returning to the Oversight Board for each specific request. This streamlined approach would allow the Successor Agency to operate in an efficient manner and to fulfill obligations without delay, avoid an overly burdensome, costly and time-consuming implementation process, and minimize risk of failure to meet our contractual responsibilities.

Conclusion

The Oversight Board is respectfully requested to authorize the Successor Agency to enter into escrow agreements related to the disbursement of Successor Agency loans when such loans are required pursuant to enforceable obligations included in any approved ROPS, and to transfer the outstanding amount of the loan funds into escrow accounts for disbursement by an independent escrow agent according to the terms of the enforceable obligations.

David Graham
Office of the Mayor

Jay Goldstone
Chief Operating Officer

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-32

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO ESCROW AGREEMENTS RELATED TO SUCCESSOR AGENCY LOANS AND TO TRANSFER THE LOAN FUNDS INTO ESCROW ACCOUNTS

WHEREAS, the former 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, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is winding down the Former RDA's affairs in accordance with AB 26, as amended by 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, 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, Health and Safety Code Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation;

WHEREAS, the Dissolution Laws are generally unclear as to whether the Successor Agency can take discretionary actions related to performance of enforceable obligations, and enter into related agreements, without Oversight Board authorization; and

WHEREAS, due to uncertainty created by the Dissolution Laws and the process for winding down the Former RDA's affairs, lenders for enforceable obligation projects that involve Successor Agency loans have requested that the Successor Agency deposit its loan funds into an escrow account as a condition precedent to the lenders funding their loans for the projects; and

WHEREAS, Successor Agency staff expect to receive additional requests of this nature in the future; and

WHEREAS, in an abundance of caution, the Successor Agency has requested that the Oversight Board authorize the Successor Agency to enter into escrow agreements related to Successor Agency loans and to transfer Successor Agency loan funds into escrow accounts to facilitate financing required pursuant to enforceable obligations.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Successor Agency is authorized to enter into escrow agreements related to the disbursement of Successor Agency loans when such loans are required pursuant to enforceable obligations included in any approved ROPS, and to transfer the outstanding amount of the loan funds into escrow accounts for disbursement by an independent escrow agent according to the terms of the enforceable obligations.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on October __, 2012.

Chair, Oversight Board