

## ITEM 8

### OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

**DATE ISSUED:** 09/11/2012

**SUBJECT:** Report from the Successor Agency regarding request for authorization for the Successor Agency to enter into contracts or amend existing contracts when required by an enforceable obligation included in an approved ROPS.

**CONTACT/PHONE NUMBER:** David Graham/236-6980

#### **DESCRIPTIVE SUMMARY OF ITEM:**

Adoption of a resolution:

Authorizing the Successor Agency to enter into contracts or amend existing contracts when required by an enforceable obligation included in an approved ROPS, as long as the Successor Agency's performance of such contracts or amendments will not result in the expenditure of funds in excess of the total payments in the approved ROPS documents.

#### **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 Recognized Obligation Schedule covering the period from July 2012 to December 2012 (ROPS 2). On August 28, 2012, the Third Recognized Obligation Payment Schedule (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 level 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), provides clear authority for the Successor Agency to perform obligations required pursuant to any enforceable obligation. However, certain enforceable obligations of the Successor Agency require the Successor Agency to enter into contracts or amend existing contracts, but do not provide a form or specific contract terms for that purpose, leaving some discretion to the Successor Agency in negotiating and drafting the contract or amendment.

While Section 34177(c) clearly authorizes the Successor Agency to take actions necessary to fulfill enforceable obligations, the Dissolution Laws are unclear as to whether the Successor Agency can enter into contracts or amend existing contracts when required by enforceable obligations, when that action will require some exercise of discretion on the part of the Successor Agency as to the specific form and terms of the contract or amendment, without the approval of the Oversight Board. Therefore, in an abundance of caution, the Successor Agency is requesting that the Oversight Board authorize the Successor Agency to enter into contracts or amendments to existing contracts under these circumstances. The Oversight Board's authorization for this broad category of contracts and amendments, rather than for each individual contract or amendment as it arises, would allow the Successor Agency to proceed with its performance of enforceable obligations in a more efficient manner.

Examples of enforceable obligations that will require one or more contracts, possible change orders and contract amendments include the Horton Square Owner Participation Agreement (OPA) in downtown and the 33<sup>rd</sup> and E Street Petrarca Disposition and Development Agreement (DDA) in southeastern San Diego.

The Horton Square OPA with Westfield Corporation ("Westfield") involves the demolition and clearance of a property currently owned by Westfield, transfer of property to the Successor Agency for purpose of park and plaza construction and, upon completion of improvements, transfer of title to the City for public use pursuant to the DDA. The Successor Agency must enter into contracts with multiple contractors and consultants to implement and manage construction, including but not limited to, archaeological resource monitoring, soils monitoring, and other specialists. The anticipated funding for all of this work is included in the approved ROPS documents.

Pursuant to the DDA and settlement agreement between the Successor Agency and Mark Petrarca (Fine Feathered Friends), Mr. Petrarca is to construct a 7,000 square-foot industrial bird cage manufacturing facility located at Market and 33<sup>rd</sup> Street, while the Successor Agency is responsible for constructing the public improvements. The Successor Agency shall competitively bid the construction, enter into a contract for construction of the improvements and with any additional special consultants that are required by the City to oversee the construction. Again, the anticipated funding for the construction of the public improvements is included in the approved ROPS documents.

### Conclusion

The Oversight Board is respectfully requested to authorize the Successor Agency to enter into contracts and amend existing contracts when required by enforceable obligations included in an approved ROPS, as long as the Successor Agency's performance of such contracts or amendments will not result in the expenditure of funds in excess of the total payments in the approved ROPS documents.

---

David Graham  
Office of the Mayor

---

Jay Goldstone  
Chief Operating Officer

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-30

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO CONTRACTS OR AMEND EXISTING CONTRACTS WHEN REQUIRED BY AN ENFORCEABLE OBLIGATION THAT IS INCLUDED IN AN APPROVED ROPS

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, certain enforceable obligations of the Successor Agency require the Successor Agency to enter into contracts, or to amend existing contracts, but do not provide a form or specific terms for that purpose, leaving some discretion to the Successor Agency in negotiating the new contract or amendment;

WHEREAS, the Dissolution Laws are unclear as to whether the Successor Agency can enter into or amend such contracts without the approval of the Oversight Board; and

WHEREAS, in an abundance of caution, the Successor Agency has requested that the Oversight Board authorize the Successor Agency to enter into contracts or amendments to existing contracts under these circumstances.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Successor Agency is authorized to enter into contracts or amend existing contracts when required by an enforceable obligation that is included in an approved ROPS, so long as the Successor Agency's performance of such new or amended contract will not result in the expenditure of funds in excess of the total payments identified in the approved ROPS documents.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on September \_\_, 2012.

---

Chair, Oversight Board