

**OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY
MINUTES FOR
BOARD MEETING
OF
TUESDAY, AUGUST 07, 2012
AT 2:00 PM
IN THE CIVIC SAN DIEGO BOARD ROOM
401 B STREET, SUITE 400, SAN DIEGO, CA 92101**

Table of Contents

CHRONOLOGY OF THE MEETING

ATTENDANCE DURING THE MEETING

CHAIR, BOARD, OVERSIGHT BOARD CONTACT COMMENT

APPROVAL OF COMMITTEE MINUTES

NON-AGENDA PUBLIC COMMENT

ADOPTION AGENDA, CONSENT ITEMS

ITEM 1 Report from the Successor Agency regarding APPROVAL OF THE THIRD RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROP 3), SUCCESSOR AGENCY ADMINISTRATIVE BUDGET FOR ROPS 3, AND ASSOCIATED ACTIONS

ITEM 2 Report from the Successor Agency regarding AUTHORIZATION TO EXECUTE CONTRACTS USING CONTINGENCY RESERVE IN APPROVED SECOND RECOGNIZED OBLIGATION PAYMENT SCHEDULE, INCLUDING, BUT NOT LIMITED TO, SERVICES CONTRACTS WITH ACCOUNTING FIRM TO COMPLETE TWO-PART DUE DILIGENCE ACCOUNTING REVIEW UNDER AB 1484

ITEM 3 Report from the Successor Agency regarding APPROVAL OF SETTLEMENT AGREEMENT RELATED TO THE MERCADO PROPERTY IN THE BARRIO LOGAN COMMUNITY OF SAN DIEGO

ITEM 4 Report from the Successor Agency regarding APPROVAL OF FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT FOR CONNECTIONS HOUSING PROJECT AT 1250 SIXTH AVENUE IN DOWNTOWN SAN DIEGO

ITEM 5 Report from the Independent Legal Counsel REGARDING LEGAL QUESTIONS RAISED AT THE OVERSIGHT BOARD MEETING OF JULY 17, 2012

COMMUNICATIONS RECEIVED

ADJOURNMENT

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Chair Mark Nelson at 2:06p.m. The meeting was adjourned by Chair Mark Nelson at 4:02 p.m.

ATTENDANCE DURING THE MEETING:

PRESENT:

Mark Nelson, City of San Diego appointee
Maureen Stapleton, Special District appointee
Dr. Bonnie Ann Dowd, California Community Colleges appointee
James Davies, City of San Diego appointee
Andra Donovan, Esq., County Superintendent of Education appointee
Peter Q. Davis, County of San Diego appointee

ABSENT:

Supervisor Ron Roberts, County of San Diego appointee

CLERK:

Nancy Gudino

ROLL CALL:

- (1) Ron Roberts- absent
- (2) Peter Q. Davis- present
- (3) Mark Nelson-present
- (4) James Davies-present
- (5) Maureen Stapleton-present
- (6) Bonnie Ann Dowd-present
- (7) Andra Donovan-present

Approval of committee minutes from July 17, 2012 meeting.

BOARD ACTION: Action Time: 2:07 p.m.

MOTION BY ANDRA DONOVAN TO APPROVE. Second by James Davies.

Passed by the following vote:

Yea: Bonnie Ann Dowd, Andra Donovan, Mark Nelson, Peter Q. Davis, James Davies

Nay: (None);

Recused: (None);

Not Present: Ron Roberts, Maureen Stapleton

Non-Agenda Public Comments provided by: Mel Shapiro, David Lee Bowen and Robert McNamara

ITEM 1 – Report from the Successor Agency regarding APPROVAL OF THE THIRD RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROP 3), SUCCESSOR AGENCY ADMINISTRATIVE BUDGET FOR ROPS 3, AND ASSOCIATED ACTIONS

ITEM DESCRIPTION:

Adoption of a resolution:

- (1) Approving the Third Recognized Obligation Payment Schedule covering the period from January 1 through June 30, 2013 (“ROPS 3”);
- (2) Authorizing Successor Agency staff, with the approval of Oversight Board legal Counsel, to make any necessary adjustments to ROPS 3 based on recent changes made by the State Department of Finance to the mandatory ROPS format, provided that the substantive content of ROPS 3 remains substantially the same;
- (3) Approving the Administrative and Project Management Budget for the Successor Agency covering the period from January 1 through June 30, 2013; and
- (4) Authorizing the Successor Agency to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS 3, consistent with California Health and Safety Code Sections 34171(d)(1)(F) and 34177.3(b).

STAFF RECOMMENDATION:

Approve proposed actions

SUPPORTING INFORMATION:

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 x1 26 (“AB 26”), 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 and to retain the Former RDA’s housing assets and assume the Former RDA’s housing responsibilities.

Under the Dissolution Laws, the Recognized Obligation Payment Schedule (“ROPS”) is the governing document as to payments that are allowed to be made by the Successor Agency during each applicable six-month period. Each ROPS is approved on a forward-looking basis for the upcoming six-month period. According to the Dissolution Laws, the ROPS has effectively superseded the Enforceable Obligation Payment Schedule (“EOPS”) and the annual Statement of Indebtedness in terms of showing enforceable obligations to be paid by the Successor Agency.

The Successor Agency has submitted, and the State Department of Finance (“DOF”) has approved, the first ROPS covering the period from January 1 through June 30, 2012, and the second ROPS covering the period from July 1 through December 31, 2012. The DOF has indicated that its decision on the prior ROPS’s is final, but has reserved the right to object to any line items in ROPS 3 or any subsequent ROPS. New Requirements under Assembly Bill 1484 The most recent legislation, AB 1484, significantly changes and clarifies certain provisions of AB 26. Among other things, AB 1484 makes several changes to the process and timing for preparation and approval of each ROPS. Those changes include:

- AB 1484 adds California Health & Safety Code (“H&S Code”) Section 34177(m), which has accelerated the deadline by which the Successor Agency must obtain the Oversight Board’s approval of ROPS 3 and submit ROPS 3 to the DOF. The new submittal deadline is September 1, 2012, as opposed to October 1, 2012. The Fourth ROPS for the period of July 1, 2012 through December 31, 2013 (“ROPS 4”) and all subsequent ROPS’s must be submitted to the DOF and the San Diego County Auditor-Controller (“CAC”) no fewer than 90 days in advance of the CAC’s semi-annual distribution of funds from the Redevelopment Property Tax Trust Fund (“RPTTF”).
- AB 1484 amends H&S Code Section 34179(h), extending the time frame by which the DOF has to request a review and to make its determination on the validity of enforceable obligations in each ROPS. The DOF now has five business days to request a review following its receipt of each ROPS, and up to 45 days total (if a review is timely requested) to make a determination on the amount of enforceable

obligations and proposed funding sources shown on the ROPS. If the DOF does not request a review within five business days, the ROPS is deemed approved. However, if the DOF conducts a review of the ROPS, the DOF may eliminate or modify any item on the ROPS prior to its approval.

- Under H&S Code Section 34177(m), within five business days after the DOF's determination on each ROPS, the Successor Agency may request additional review by the DOF and an opportunity to meet and confer with the DOF on disputed items in the ROPS. The DOF must notify the Successor Agency and the CAC regarding the outcome of its additional review at least 15 days before the date of the CAC's semi-annual property tax distribution under the Dissolution Laws.

- H&S Code Section 37177(m) subjects the Successor Agency and its sponsoring community (i.e., the City) to onerous penalties if the Successor Agency fails to comply with certain new deadlines. For instance, if the Successor Agency fails to submit an Oversight Board-approved ROPS by the statutory deadline (e.g., September 1, 2012 for ROPS 3), the City will be subject to civil penalties in the amount of \$10,000 per day for each day the ROPS is delinquent. If the Successor Agency fails to submit a ROPS within 10 days after the deadline, the Successor Agency's maximum administrative cost allowance for the period covered by the applicable ROPS will be reduced by 25 percent. In addition, untimely submittal of the ROPS, in compliance with the DOF's content requirements, could result in the delay of distribution of funds from the CAC to the Successor Agency for the payment of enforceable obligations.

- AB 1484 adds H&S Code Section 34182.5, which enables the CAC to object to the inclusion of any items that are not demonstrated to be enforceable obligations, rather than only "certifying" the ROPS as prescribed under AB 26. The CAC is directed to notify the DOF, Successor Agency, and the Oversight Board concerning any objections, generally at least 60 days prior to the distribution date of funds from the RPTTF for the applicable ROPS period, except that for ROPS 3, the notice must be given no later than October 1, 2012. If an Oversight Board disputes the CAC's objection to any ROPS item, the Oversight Board may refer the matter to the DOF for a determination of what will be approved for inclusion in the applicable ROPS.

- AB 1484 amends H&S Code Section 34171(b), providing some clarity on the three percent administrative cost allowance to be allocated to the Successor Agency for each six-month ROPS period. AB 1484 states that administrative cost allowance excludes litigation costs, settlements and judgments, and maintenance costs for assets owned by the Successor Agency prior to disposition. Further, AB 1484 clarifies that employee costs for specific project implementation activities, such as project management and construction inspection, are considered project-specific costs and are not counted against the Successor Agency's administrative cost allowance.
- AB 1484 adds H&S Code Section 34176(g), which provides for the future expenditure of "excess" housing bond proceeds that were issued for affordable housing purposes prior to January 1, 2011, and were backed by the Low and Moderate Income Housing Fund, but are not contractually committed at this time for a specific project. The successor housing entity (i.e., the City in this instance) is permitted to designate the use and commitment of excess housing bond proceeds and to request the Successor Agency's inclusion of line items in ROPS 3 and any future ROPS for the expenditure of such proceeds. In reviewing the proposed inclusion of excess housing bond proceeds in any ROPS, the Oversight Board and the DOF are limited to a determination that the designations and commitments of such proceeds are consistent with bond covenants and that there are sufficient funds available. The use of the excess housing bond proceeds is not contingent upon the DOF's issuance of a finding of completion to the Successor Agency under H&S Code Section 34179.7.

- AB 1484 adds H&S Code Section 34191.4(c), which provides for the future expenditure of "excess" non-housing bond proceeds that were issued prior to January 1, 2011, but are not contractually committed at this time for a specific project. Such excess bond proceeds must be expended in a manner consistent with the original bond covenants, and obligations for the expenditure of such proceeds must be listed separately on the ROPS. Unlike the situation with excess housing bond proceeds, the use of the excess nonhousing bond proceeds is contingent upon the DOF's issuance of a finding of completion to the Successor Agency under H&S Code Section 34179.7.

Third Recognized Obligation Payment Schedule

ROPS 3 has been prepared consistent with the previous version of the ROPS. Several items listed on previous ROPS's have been fully depleted and no remaining obligation continues to be shown on ROPS 3. Further, certain items have been removed from ROPS 3 that were no longer necessary or redundant in nature. For example, several agreements between the Former RDA and the City of San Diego had been listed individually on previous versions of the ROPS's and were the line items by which the Successor Agency used to display administrative costs or project management costs. Those have been replaced with two lines on Form A, B, C, page 47, lines 5 and 6. Form A, B, C, page 47, line 6 represents the amount of administrative budget for the Successor Agency as more thoroughly detailed in Attachment B - ROPS 3 Administrative and Project Management Budget. Form A, B, C, page 47, line 7 represents the amount of project management costs associated with implementing projects on the enforceable obligation list or litigation costs, as more thoroughly detailed in Attachment B - ROPS 3 Administrative and Project Management Budget.

Other changes from previous ROPS's include the consolidation of similar lines into a single line item. For example, a single project may be funded from several sources, including RPTTF distributions, reserve balance, bond proceeds or other revenues. That project may have been represented on multiple lines, with each line dedicated to a specific funding source. Staff has done its best to consolidate those lines items into a single line on Forms A, B and C. The distribution of the funding source can be seen on Form C. Certain costs have been added to ROPS 3 not previously listed on ROPS 1 or ROPS 2. Those specific items include:

- Oversight Board Legal Counsel – Meyers Nave (Form A, Page 48, Line 6);
- Audit required under AB 1484 of low and moderate income housing assets (Form A, Page 48, Line 7);
- Audit required under AB 1484 of all other assets of the Successor Agency (Form A, Page 47, Line 8);
- Expenses for general property management, security and related issues, and unforeseen litigation and claims (Form A, Page 48, Line 4);
- Reserve for Debt Service (Form A, Page 48, Lines 9 and 10); and
- Unencumbered affordable housing bond proceeds and non-housing bond proceeds, consistent with the above-described provisions of AB 1484 (Form A, Page 49 and on).

Each ROPS is prepared using estimates and staff's best assumption as to the timing and amount of payments in a given ROPS period. Actual payments during the ROPS 1 period may have varied from amounts listed in ROPS 1. Form B provides a column labeled "Adjustments from Prior Schedules". Amounts listed in this column primarily represent line items in which payments toward a particular enforceable obligation may have been above or below the amount listed in ROPS 1, although any increased payments during the six-month ROPS 1 period were within the maximum total payment obligation for the life of such enforceable obligation.

ROPS 3 was prepared in the format received from the CAC on February 15, 2012 and is the same format used for ROPS 1 and ROPS 2. AB 1484 now requires the Successor Agency to submit each future ROPS in a format approved by the DOF. For a period of about two weeks starting in mid-July 2012, the sample ROPS previously posted on the DOF website had been removed and replaced by a comment indicating a revised sample ROPS will be forthcoming. Successor Agency staff thus prepared ROPS 3 using the February 15 sample for purposes of bringing ROPS 3 to the Successor Agency's board (i.e., the City Council) on July 31, 2012, before its summer legislative recess. On August 1, 2012, the DOF posted an updated sample ROPS on its website. In order to comply fully with AB 1484, Successor Agency staff will need to revise ROPS 3 to comply with the DOF's updated format before submitting ROPS 3 to the DOF. Staff believes that there should be no change to the dollar amounts listed on ROPS 3, but merely a change in format and presentation of the information as well as any additional information required by the DOF. As part of the proposed action approving ROPS 3, the Oversight Board is being asked to authorize any necessary adjustments to ROPS 3 based on the recent changes made by the DOF to the mandatory ROPS format, provided that the substantive content of ROPS 3 remains substantially the same.

Under AB 1484, a ROPS is not considered valid until the following conditions have been met:

- The ROPS is prepared by the Successor Agency and submitted to the Oversight Board;
- The Oversight Board approves the ROPS;
- The ROPS is then submitted to the CAC, DOF and State Controller; and
- The DOF's initial review period of five business days has expired or, if the DOF timely request a review, the DOF has approved the ROPS with any deletions or revisions during a 45-day review period, subject to the potential meet-and-confer process between the DOF and the Successor Agency as described above.

Successor Agency ROPS 3 Administrative and Project Management Budget

The Successor Agency ROPS 3 Administrative and Project Management Budget ("ROPS 3 Budget") is approximately \$4.2 million for ROPS 3. The budget is segregated by administrative costs and project management costs. The administrative cost portion of the budget is approximately \$2.8 million and the project management portion of the budget is approximately \$1.4 million. Further details of the ROPS 3 Budget can be found in Attachment B - ROPS 3 Administrative and Project Management Budget. The ROPS 3 Budget is funded with \$2,312,172 of 3% administrative cost allowance and \$1,883,328 of funds on hand from the Former RDA. Pursuant to the Successor Agency's policies and procedures adopted by the Successor Agency on February 13, 2012, the Successor Agency's administrative function will be coordinated through the Office of the Mayor and carried out by either City Staff or employees of a City-owned nonprofit public benefit corporation.

Pursuant to H&S Code Section 34177(j), the Successor Agency is required to adopt and propose an administrative budget to the Oversight Board for its approval. The proposed budget must include: (1) estimated amounts for the Successor Agency's administrative costs for the upcoming six-month period; (2) proposed sources of payments for the cost identified; and (3) proposals for arrangements for administrative and operations services provided by a city or other entity. The Successor Agency can receive, as an administrative cost allowance, three percent of the amount disbursed by the CAC to the Successor Agency from the RPTTF. ROPS 3 shows that the amount of administrative cost allowance to be disbursed by the CAC to the Successor Agency will be approximately \$2,312,172. Based on guidance provided by the DOF and the current language in the Dissolution Laws, the Successor Agency is allowed to fund its administrative function beyond the three percent administrative allowance with any funds on hand such as bond proceeds or from other sources of the Former RDA, and project management costs associated with the implementation of enforceable obligations are deemed project-specific expenses and are not counted against the three percent administrative cost allowance.

As outlined in H&S Code Section 34177, the purpose of the Successor Agency's administrative function is the orderly wind down of the Former RDA's affairs and includes such functions as: making payments on enforceable obligations; maintaining any required reserves amounts; performing obligations required by enforceable obligations; disposing of assets and properties; enforcing all of the Former RDA's rights; expeditiously winding down the Former RDA's affairs; and preparing each ROPS and accompanying administrative budget.

The table below provides a comparison of the proposed ROPS 3 Budget to the approved ROPS 2 administrative budget.

Expenditure

Expenditure	ROPS 3 Amount	ROPS 2 Amount	Change
Legal/Litigation Services	\$ 555,000	\$ 555,000	\$ 0
Financial/Debt Services	\$ 135,000	\$ 200,000	(\$ 65,000)
Accounting Services	\$ 270,000	\$ 270,000	\$ 0
Real Estate Services	\$ 136,000	\$ 50,000	\$ 86,000
Admin./Project Mgmt. Support	<u>\$3,099,500</u>	<u>\$2,397,000</u>	<u>\$ 702,500</u>
Total	<u>\$4,195,500</u>	<u>\$3,472,000</u>	<u>\$ 723,500</u>

The reduction in Financial/Debt Services is based on a revised estimate of the amount of bond funds invested by the City Treasurer, as well as a reduction of 5 basis points in the amount charged by the City Treasurer's Office to the Successor Agency on the amount of funds invested by the City Treasurer's Office, based on input provided by the Oversight Board in connection with the ROPS 2 administrative budget. The increase in Real Estate Service is representative of 1.5 FTE to support the requirements under AB 26 and 1484. The ROPS 2 budget provides a \$50,000 provision only. The \$489,000 increase in Administrative/Project Management Support is primarily attributable to the allocation of City GGSB typically assessed in January as well as the addition a 2 FTE from the Economic Growth Services Department for services provided by two City employees who have previously worked on behalf of the Former RDA and will assist in the wind down activities related to both administrative and project management functions.

Authority to Enter into Contracts for Budgeted Expenses

H&S Code Section 34171(d)(1)(F) confirms that contracts necessary for the administration or operation of the Successor Agency, including, but not limited to, agreements concerning litigation expenses related to assets or obligations, settlements and judgments, and agreements related to the costs of maintaining assets prior to disposition, are enforceable obligations. In addition, H&S Code Section 34177.3(b) states that the Successor Agency may create new enforceable obligations to conduct the work of winding down the Former RDA's operations, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance. The Successor Agency anticipates, based on the past experience of the Former RDA, that certain circumstances, while presently unforeseen, may arise in the future that will cause the Successor Agency to incur additional costs for management and security of properties and other assets, and unforeseen litigation and claims, above and beyond the costs estimated in specific line items in ROPS 3. As such, ROPS 3 includes a line item for costs of this nature up to an aggregate maximum of \$500,000 during the applicable six-month period (see Form A, page 48, line 4), although such costs are not yet identified under an existing contract with a specific payee.

The Successor Agency further anticipates, based on the past experience of the Former RDA, that certain circumstances, while presently unforeseen, may arise in the future that cause the Successor Agency to incur other additional expenses, above and beyond the expenses shown in ROPS 3, in order to wind down the Redevelopment Agency's operations in an orderly fashion and to avoid or minimize liabilities, including, but not limited to, exposure to claims or litigation. Before its dissolution, the Former RDA could rely upon a steady stream of tax increment revenue and reserve balances to address any unforeseen circumstances. Now that the Former RDA has dissolved and the stream of revenue has been substantially altered, the Successor Agency believes it is prudent to retain a contingency amount to address unforeseen circumstances, consistent with generally accepted accounting practices. As such, ROPS 3 includes a line item for costs of this nature up to an aggregate maximum of \$500,000 during the applicable six-month period (see Form A, page 48, line 5), although such costs are not yet identified under an existing contract with a specific payee.

As part of this proposed action, the Oversight Board is being asked to authorize the Successor Agency to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS 3, consistent with California Health and Safety Code Sections 34171(d)(1)(F) and 34177.3(b). This streamlined approach will allow the

Successor Agency to operate in an efficient manner and to address unforeseen circumstances without delay, thereby minimizing the Successor Agency's exposure to new claims and liabilities, to the benefit of the local taxing entities. Before this streamlined approach can be used, both the Oversight Board and the DOF will need to approve ROPS 3.

Conclusion

The oversight board is respectfully requested to approve ROPS 3, the ROPS 3 Budget and the associated actions as described above.

Public Comments in favor provided by: Gary Smith, Robert Ito, Mark Petrarca, Laura Garrett, Chip Buttner, Kim Brewer, Robert McNamara, Kris Michell, Janelle Riella

BOARD ACTION: Action Time: 3:21 PM

MOTION BY MARK NELSON TO DIRECT STAFF TO PREPARE A THOROUGH ROPS CONSISTENT WITH THE NEW FORM AND GUIDELINES TO BE BROUGHT BACK AT A SPECIAL MEETING ON AUGUST 28TH AND ADJOURN THE MEETING OF AUGUST 21ST. IN ADDITION TO DIRECTING LEGAL TO REVIEW SPECIFIC AGREEMENTS SITED AND PROVIDE OPINION IN ADVANCE. Second by Bonnie Ann Dowd.

Passed by the following vote:

Yea: Bonnie Ann Dowd, Maureen Stapleton, Mark Nelson, Peter Q. Davis, James Davies

Nay: (None);

Recused: (None);

Not Present: Ron Roberts, Andra Donovan

ITEM 2 - Report from the Successor Agency regarding AUTHORIZATION TO EXECUTE CONTRACTS USING CONTINGENCY RESERVE IN APPROVED SECOND RECOGNIZED OBLIGATION PAYMENT SCHEDULE, INCLUDING, BUT NOT LIMITED TO, SERVICES CONTRACTS WITH ACCOUNTING FIRM TO COMPLETE TWO-PART DUE DILIGENCE ACCOUNTING REVIEW UNDER AB 1484

ITEM DESCRIPTION:

Adoption of a resolution:

Authorizing the Successor Agency to execute contracts using contingency reserve in approved second Recognized Obligation Payment Schedule, including, but not limited to, services contracts with accounting firm to complete two-part due diligence accounting review under AB 1484

STAFF RECOMMENDATION:

Approve proposed action.

SUPPORTING INFORMATION:

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 x1 26 ("AB 26"), enacted on June 28, 2011, and Assembly Bill1484 ("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 and to retain the Former RDA's housing assets and assume the Former RDA's housing responsibilities.

AB 1484 provides a new requirement to conduct a review by an independent licensed accountant of available cash assets of the Successor Agencies. Upon completion of the review, the DOF will issue a finding of completion for the Successor Agency once the Successor Agency remits the unencumbered cash assets to the County Auditor-Controller. The legislation does not indicate how the costs of the review are to be paid. Additionally, the DOF has notified successor agencies that they are no longer accepting revisions to previously approved ROPS. The approved Recognized Obligation Payment Schedule for July 1, 2012 through December 31, 2012 ("ROPS 2") includes a contingency line item that may be partially sufficient to pay for some of the work of the independent accountant. Additionally, the proposed Recognized Obligation Payment Schedule for January 1, 2013 through June 30, 2013 ("ROPS 3") includes line items for payments to conduct the housing assets audit and non-housing assets audit. The review of the Low and Moderate Income Housing Funds ("LMIHF") by the Oversight Board must be complete by October 1, 2012. The review of all other funds by the Oversight Board must be complete by December 15, 2012.

The purpose of the non-housing review is to identify the value of all assets transferred from the former RDA to the Successor Agency, those assets, if any, transferred to the City of San Diego, those assets transferred to any other public agency or private party associated with enforceable obligations and a reconciliation of revenues, expenditures, assets and liabilities through June 30, 2012. A similar review of the LMIHF is required to identify the value of all assets as of June 30, 2012, including those funds that are legally restricted such as bond proceeds or grant funds, physical assets, properties, amounts owed for enforceable obligations, and a determination on the availability of funds to pay all enforceable obligations.

Upon completion of each review, the Oversight Board is to schedule a public comment session to take place at least five business days prior to the Oversight Board's vote on the approval of the reviews. The review of the LMIHF must be transmitted to the DOF by October 15, 2012, and the review of other assets by January 15, 2015. The DOF must complete its review of the LMIHF by November 9, 2012 and the review of the other assets by April 1, 2013 for the remaining funds.

On July 24, 2012 the County of San Diego Auditor and Controller issued a letter (Attachment A) advising successor agencies that it lacked the resources necessary to conduct audits by the required completion deadlines. Instead, the County will approve of any licensed CPA that has expertise in Redevelopment. If this action is approved, the Successor Agency will solicit the services of a licensed accountant or accounting firm with expertise in Redevelopment and will submit the name of the selection to the County for review and approval. If that firm is rejected, the Successor Agency will solicit the services of alternate licensed accountants or accounting firms and will submit those names to the County for review and approval until the County approves a selection.

Significant penalties to the sponsoring (i.e., the City) are contained in the legislation if the audits are not completed in a timely manner or assets transferred to the sponsoring community are not recovered to the satisfaction of the DOF.

Conclusion

The Oversight Board is respectfully requested to authorize the Successor Agency to execute contracts using contingency reserve in approved second Recognized Obligation Payment Schedule, including, but not limited to, services contracts with accounting firm to complete the two-part due diligence accounting review required by AB 1484.

BOARD ACTION: Action Time: 3:24 PM

MOTION BY PETER DAVIS TO ADOPT RESOLUTION. Second by James Davies.

Passed by the following vote:

Yea: Bonnie Ann Dowd, Maureen Stapleton, Mark Nelson, Peter Q. Davis,
James Davies

Nay: (None);

Recused: (None);

Not Present: Ron Roberts, Andra Donovan.

ITEM 3 – Report from the Successor Agency regarding APPROVAL OF SETTLEMENT AGREEMENT RELATED TO THE MERCADO PROPERTY IN THE BARRIO LOGAN COMMUNITY OF SAN DIEGO

ITEM DESCRIPTION:

Adoption of a Resolution to Approve a Settlement Agreement with C. Samuel Marasco, Land Grant Development Unlimited, Mercado Alliance, LLC, and American Contractors Indemnity Company to settle all claims related to the Mercado Property in the Barrio Logan Community of San Diego.

STAFF RECOMMENDATION:

Approve proposed action.

SUPPORTING INFORMATION:

The Property

In 1996, the City of San Diego (City) purchased a fee simple interest in certain property bounded by Crosby Street on the north, Cal Trans Coronado Bay Bridge Right-of-Way and Chicano Park on the south, National Avenue on the east and Main Street on the west (the "Mercado Property").

The City subsequently transferred the Mercado Property to the Redevelopment Agency of the City of San Diego (Former RDA) for redevelopment. As discussed below, the Former RDA transferred the Mercado Property to Mercado Alliance, LLC (Mercado Alliance) in 2003 and took back the property in 2006. In 2010, the Former RDA transferred the Mercado Property to Shea Mercado, LLC (not a party to this agreement) for redevelopment purposes.

The Mercado Disposition and Development Agreement

On November 12, 2000, the Former RDA entered into a disposition and development agreement (DDA) with Mercado Alliance, LLC, which obligated the Former RDA to transfer the Mercado Property to Mercado Alliance, and obligated Mercado Alliance to develop the property consistent with the DDA. The DDA contains a right of reverter provision, which allowed the Former RDA to take back the Mercado Property under certain circumstances ("Reversion Provision"). The DDA also contains a provision which governs rights to cost reimbursement in the event of a reversion ("Reimbursement Provision").

On September 8, 2003, the Former RDA transferred the Mercado Property to Mercado Alliance. On May 2, 2006, after Mercado Alliance failed to commence development, the Former RDA exercised its rights under the Reversion Provision and caused an Exercise of Power of Termination to be recorded on the Property, thereby taking back the Mercado Property.

First Lawsuit

On May 12, 2006, the Former RDA filed a Complaint against Mercado Alliance for breach of contract and other claims in the San Diego Superior Court (Case No. GIC 865872). On August 30, 2006, Mercado Alliance filed a Cross Complaint, and on January 23, 2007, Mercado Alliance filed a First Amended Cross-Complaint alleging 13 causes of action including breach of contract, declaratory relief related to the recorded Exercise of Power of Termination, and quiet title.

On September 25, 2006, Mercado Alliance applied for an injunction to enjoin the Former RDA from interfering with Mercado Alliance's alleged ownership of the Mercado Property. On February 22, 2007, the Court granted an injunction in favor of Mercado Alliance and against the Former RDA, but required Mercado Alliance to post an undertaking in the amount of \$100,000. The Former RDA filed a motion for summary adjudication on all claims in Mercado Alliance's First Amended Cross-Complaint, except on the trespass cause of action. On May 29, 2007, the Court granted the Former RDA's motion for summary adjudication in its entirety. On June 12, 2007, the Court dissolved the injunction. On May 12, 2008, after the Former RDA dismissed its claims and after Mercado Alliance dismissed its trespass claim, the Court entered Judgment.

Mercado Alliance appealed the Judgment, and on December 2, 2009, the Court of Appeal, Fourth Appellate District, dismissed the appeal.

Second Lawsuit

Thereafter, Mercado Alliance continued to hold itself out as the owner of the Mercado Property and also recorded trust deeds against the property in favor of Land Grant Development Unlimited (LandGrant), a company controlled by C. Samuel Marasco (Marasco). The Former RDA filed a new action on June 8, 2010, in the San Diego Superior Court (Case No. 37-2010-00093850-CU-OR-CTL). On October 28, 2010, the Former RDA filed a Second Amended Complaint to quiet title and for slander of title against Land Grant, Mercado Alliance, Marasco. The Second Amended Complaint also included a claim for recovery on the surety bond against Mercado Alliance and the surety, American Contractors Indemnity Company ("American Contractors").

On February 16, 2012, the Successor Agency (as the successor party to the Former RDA in the litigation) filed a motion for summary adjudication, seeking to quiet title and to cancel the deeds of trust recorded on the Mercado Property. On April 20, 2012, the Court granted the Successor Agency's motion for summary adjudication in its entirety. The remaining causes of action are for recovery of surety bond against Mercado and American Contractors and slander of title against LandGrant, Mercado Alliance and Marasco.

The Settlement Agreement

The proposed settlement agreement ("Agreement") resolves all outstanding disputes related to the Mercado Property. The main deal points are as follows:

1. LandGrant, Mercado Alliance and Marasco agree to waive any rights they may have to appeal the ruling on the Successor Agency's motion for summary adjudication in Case No. 37-2010-00093850-CU-OR-CTL quieting title in the Mercado Property.
2. LandGrant, Mercado Alliance and Marasco agree to forego any and all claims they may have under the DDA or Grant Deed, including any claim for reimbursement under the Reimbursement Provision.
3. The Parties agree that the Agreement settles any and all claims having anything to do whatsoever with the Mercado Property and that none of the parties except for the Successor Agency has any interest in the Mercado Property.
4. American Contractors agrees to pay the Successor Agency fifty thousand dollars (\$50,000) in full settlement of the Agency's claim for the recovery of the \$100,000 undertaking in Case No. GIC 865872 .
5. The Successor Agency agrees to dismiss the recovery of surety bond and slander of title causes of action with prejudice.

On July 31, 2012, the San Diego City Council (the Successor Agency's board) approved the Agreement in closed session. It is uncertain, in light of restrictive language in Assembly Bill xl 26 (AB 26) and Assembly Bill 1484 (AB 1484), whether the Successor Agency has the legal authority to execute the Agreement without the approval of the Oversight Board and the State

Department of Finance (DOF), even though the Successor Agency is receiving, not paying, funds under the Agreement. Therefore, Successor Agency staff respectfully requests that the Oversight Board approve the Agreement. Upon the Oversight Board's approval, the item would be presented by Successor Agency staff to the DOF for review and approval or deemed approval in accordance with AB 26 and AB 1484 (collectively, the RDA Dissolution Laws).

Reasons for Approval of Settlement Agreement

The Agreement constitutes a sensible, global resolution of long-standing disputes among the interested parties. The Agreement is designed to avoid the considerable legal expense, allocation of resources, and uncertainty associated with protracted litigation of the disputes. The Agreement will allow the Successor Agency to collect \$50,000 on an outstanding claim, to dispense with any potential claim for reimbursement by Mercado Alliance under the DDA, and to conserve the Successor Agency's limited resources and funds, all for the benefit of local taxing entities. Accordingly, the Agreement is consistent with the fiscal objectives of the RDA Dissolution Laws.

BOARD ACTION: Action Time: 3:26 PM

MOTION BY PETER DAVIS TO ADOPT RESOLUTION. Second by Maureen Stapleton.

Passed by the following vote:

Yea: Bonnie Ann Dowd, Maureen Stapleton, Mark Nelson, Peter Q. Davis, James Davies

Nay: (None);

Recused: (None);

Not Present: Ron Roberts, Andra Donovan.

ITEM 4 – Report from the Successor Agency regarding APPROVAL OF FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT FOR CONNECTIONS HOUSING PROJECT AT 1250 SIXTH AVENUE IN DOWNTOWN SAN DIEGO

ITEM DESCRIPTION:

Adoption of a resolution to approve the First Amendment to the DDA with the Developer to reflect revisions to the project's financing and amend the existing language regarding distribution of additional funding sources secured by the Developer.

STAFF RECOMMENDATION:

Approve proposed action.

SUPPORTING INFORMATION:

The former Redevelopment Agency of the City of San Diego ("Former RDA") entered into a DDA with the Developer for the rehabilitation of the former World Trade Center building to accommodate a multi-use homeless project called Connections Housing on March 1, 2011. The Former RDA provided two loans to the Developer in the aggregate amount of \$15,050,000, of which \$12,050,000 was made from the Former RDA's Low and Moderate Income Housing Fund ("Low/Mod Loan"), and \$3,000,000 was made from the Former RDA's non-Low/Mod Fund ("80% Loan"). The proposed Connections Housing consists of 75 permanent supportive living units (includes two manager's units), 150 transitional housing beds, a primary health care clinic, administrative offices, and a multi-service homeless center. The project is currently under construction and scheduled to be complete in December 2012.

Since the DDA was executed in March 2011, the Developer secured additional funding sources, including Community Development Block Grant (CDBG) funding in the amount of \$950,000 and a Mental Health Services Act (MHSA) program loan in the amount of \$787,000. In addition, the Developer submitted an

application for the Historic Tax Credit (HTC) program for an amount of \$4 million. Per the executed DDA, the additional funding sources secured by the Developer must be used, first to pay for cost overruns equal to two percent of hard costs in the approved budget, if any, and second to reduce the Former RDA's Low/Mod Loan from \$12,050,000 to \$10 million. The remaining proceeds from additional funding sources are required to be shared between the Developer and Former RDA/ San Diego Housing Commission (SDHC). However, the project has incurred increases in development costs to address unforeseen structural and historic restoration issues and additional abatement of hazardous materials that were discovered during demolition. The Developer has requested that the DDA be amended to allow the Developer to use the remaining additional proceeds to pay for cost overruns after reducing the Former RDA's Low/Mod Loan to \$10 million, but before sharing the remaining proceeds with the Successor Agency and SDHC. Staff considers the Developer's request reasonable as the Former RDA's previous DDAs for other affordable housing projects allowed developers to use additional proceeds to cover additional costs before distribution to the Former RDA as an incentive to developers to pursue additional sources. The proposed First Amendment incorporates revisions to the project budget and funding sources, and amends the existing language regarding distribution of additional funding sources to incorporate the Developer's request.

On March 1, 2011, the Former RDA entered into a DDA with the Developer for the rehabilitation of the former World Trade Center building into a multi-use homeless project called Connections Housing with a total gross building area of 116,300 square feet. The Former RDA provided two loans to the Developer in the aggregate amount of \$15,050,000, of which \$12,050,000 was made from the Former RDA's Low/Mod Fund, and \$3,000,000 was made from the Former RDA's 80% Fund. The two loans are evidenced by two promissory notes, secured by deeds of trust recorded in December 2011. The City of San Diego, which had owned the former World Trade Center building since 2004, sold the building to the Former RDA, which subsequently sold it to the Developer for a purchase price of \$4,300,000 in a concurrent escrow. The project is currently under construction and scheduled to be complete in December 2012. FISCAL CONSIDERATIONS: If the proposed First Amendment is approved, the amount of the Former RDA's Low/Mod Loan will be reduced from \$12,050,000 to \$11,263,000 to reflect the MHS funding secured by the Developer. Further, if the Developer successfully secures HTC award, the Former RDA's Low/Mod Loan will be reduced to \$10,000,000. The proposed revisions to the method of distribution of additional funding sources will result in a smaller share of proceeds to the Successor Agency after reduction of the Former RDA's Low Mod Loan to \$10,000,000, but will sufficiently cover the estimated cost overruns.

Project Description

The former World Trade Center building is a locally-designated historic property located at 1250 Sixth Avenue (Attachment A). It is a 12-story building with a basement and sub-basement levels that was built in 1928. The proposed Connections Housing consists of 75 permanent supportive living units (includes two manager's units), 150 transitional housing beds, a primary health care clinic, administrative offices, and a multi-service homeless center.

DISCUSSION

Project Financing

Development Budget

At the time of the DDA execution in March 2011, the estimated total development cost was \$32,339,000 ("Original Development Costs"). The Developer had limited access to the building for investigation of hazardous materials prior to acquisition of the property, and commenced construction without knowing the full extent of asbestos removal. The Developer discovered significantly more asbestos-covered areas than originally anticipated during demolition, which required additional abatement costs. Also, the Developer encountered several major structural issues in the basement and sub-basement levels, in the areas covered by existing walls and floors, which could have not been predicted prior to construction. As a result, the

total development budget has increased to \$36,638,000. There is no proposed increase to the Developer's fee. The following table compares the Original Development Costs to the Developer's updated budget.

Development Budget	Original March 2011 (DDA)	Updated July 2012	Difference
Acquisition Cost	\$4,300,000	\$4,300,000	\$0
Direct Costs	\$22,740,000	\$25,649,600	\$2,909,600
Indirect Costs	\$4,252,000	\$5,373,800	\$1,121,800
Financing Costs	\$1,047,000	\$1,314,600	\$267,600
Total	\$32,339,000	\$36,638,000	\$4,299,000

The table below shows a comparison of development costs among recent affordable housing projects funded by the Former RDA. As shown, even with the cost increases, the Connections Housing project has lower development costs on both per square foot and per unit basis for its residential component.

	Total Development Cost ⁽¹⁾	Per Square Foot ⁽¹⁾	Per Unit/Bed ⁽²⁾
Connections - REVISED	\$20,000,000	\$280	\$136,000
Comparative Projects			
Cedar Gateway (65 units – new construction)	\$32,000,000	\$433	\$490,000
9 th & Broadway (250 units – new construction)	\$73,000,000	\$437	\$290,000
15 th & Commercial (140 units – new construction)	\$40,000,000	\$555	\$283,000
Hotel Sandford (130 units – rehabilitation)	\$12,000,000	\$200	\$94,000
Studio 15 (275 units – new construction)	\$41,000,000	\$417	\$149,000

⁽¹⁾ For residential component only.

⁽²⁾ 2 interim beds=1 unit

Sources

At the time of the DDA execution, the Developer proposed to finance the project with the Former RDA loans, Low Income Housing Tax Credit equity (9%) and SDHC loan. The Former RDA initially committed two loans in the aggregate amount of \$16 million, consisted of the Low/Mod Loan in the amount of \$13 million and 80% Loan in the amount of \$3 million. The DDA required the Developer to pursue other funding sources, and if successful in securing them, to reduce the Former RDA's Low/Mod Loan by up to \$3 million. The Developer successfully secured the CDBG funding in the amount of \$950,000 prior to loan closing, and the Former RDA loan was reduced to \$12,050,000 accordingly at the time of closing. Subsequently, the Developer secured the MHSA loan in the amount of \$787,000. The proposed First Amendment would further reduce the amount of the Former RDA's Low/Mod Loan to \$11,263,000 to reflect the MHSA funding.

In addition, the Developer submitted a funding application for the HTC Program in the amount of \$4 million in June 2012. The application is currently under review by the State Office of Historic Preservation, Department of Parks and Recreation, which will then be forwarded to the National Park Service Office of Historic Preservation. If successful in securing the HTC funding commitment, the total sources of funding will increase to \$36,638,000, which would be sufficient to cover the increased project budget after reducing the Former RDA's Low/Mod Loan by \$1,263,000 to \$10 million pursuant to the DDA.

The following table compares the original and updated proposed funding sources.

Sources of Funds	Original March 2011 (DDA)	Updated July 2012	Difference
Tax Credit Equity	\$14,339,000	\$15,901,000	\$1,562,000
SDHC	\$2,000,000	\$2,000,000	\$0
Former RDA Low/Mod Loan	\$13,000,000	\$10,000,000	(\$3,000,000)
Former RDA 80% Loan	\$3,000,000	\$3,000,000	\$0
CDBG	\$0	\$950,000	\$950,000
MHSA	\$0	\$787,000	\$787,000
HTC (not committed yet)	\$0	\$4,000,000	\$4,000,000
Total	\$32,339,000	\$36,638,000	\$4,299,000

Proposed First Amendment to DDA

According to the DDA, in the event the Developer pursues and secures additional funding for the project, the additional proceeds are required to be distributed as follows:

1. Pay for cost overruns equal to two percent of hard costs in the approved total project budget;
2. Reduce the Former RDA's Low/Mod Loan by up to \$3,000,000;
3. Next \$400,000 to be split 50 percent to the Developer and 50 percent to the Former RDA/SDHC; and
4. Remainder to be split 25 percent to the Developer and 75 percent to the Former RDA/

SDHC.

At the time of loan closing in December 2011, a restricted contingency was created in the amount of \$400,000, which equaled two percent of the construction budget, to reflect an increase in the estimated Tax Credit equity. The restricted contingency was created to satisfy the first requirement listed above and will be used to cover the cost overruns. In addition, at the time of loan closing, the Former RDA's Low/Mod Loan was reduced to \$12,050,000 to reflect the CDBG funding secured by the Developer. The Former RDA's Low/Mod Loan is proposed to be further reduced by the amount of the MHSA loan (\$787,000) through the proposed First Amendment. If the Developer secures the HTC award (expected before January 2013), the Former RDA's Low/Mod loan could be reduced by the remaining \$1,263,000 to complete the second requirement listed above.

According to the distribution order included in the DDA, the Developer is required to share the remaining HTC proceeds with the Successor Agency and SDHC after reducing the Former RDA's Low/Mod Loan. However, the Developer's share would not be sufficient to pay for the increases in the project budget. The Developer requested that the DDA be amended to allow the Developer to use the remaining HTC proceeds, after reducing the Former RDA's Low/Mod Loan to \$10 million, toward paying the additional project costs. Staff considers the Developer's request reasonable based on the Developer's demonstrated commitment and performance to reduce the Former RDA's Low/Mod Loan by \$3 million. In addition, the Former RDA's previous DDAs for other affordable housing projects allowed developers to use additional proceeds to cover additional costs before distribution to the Former RDA to incentivize developers to pursue additional sources. The remaining proceeds after paying for the cost overruns are proposed to be shared 25 percent to the Developer and 75 percent to the Former RDA (Successor Agency)/SDHC. Pursuant to AB 1484, any funds repaid on Low/Mod loans shall be held in the Low and Moderate Income Housing Asset Fund ("Housing Trust Fund") for use in future Low/Mod housing projects.

The following changes to the DDA are proposed and are reflected in the attached First Amendment:

- The maximum principal balance of the Former RDA's promissory note securing its Low/Mod Loan will be reduced from \$12,050,000 to \$11,263,000 to reflect MHSA loan commitment. The amount cannot be reduced to \$10 million as proposed above until the Developer actually secures HTC funding.
- The distribution order for additional proceeds will be amended as follows:
 1. The amount of \$400,000 to be allocated as a restricted contingency to cover project's cost overruns;
 2. One hundred percent (100%) of the next \$1,263,000 to be used to reduce the Former RDA's Low/Mod Loan;

3. The remaining proceeds to be used by the Developer to cover any remaining cost overruns after using the restricted contingency; and
4. Any remaining proceeds to be split 25 percent to the Developer and 75 percent to the Successor Agency and SDHC.
 - To reflect the above changes, Amended Method of Financing and Amended Agency 20% Note are attached to the First Amendment.
 - To reflect the revised budget, Amended Project Budget is attached to the First Amendment. Staff consulted SDHC staff regarding the proposed changes to the DDA. SDHC staff agrees to the revisions, specifically the changes to distribution of additional proceeds.

Proposed Schedule of Performance –

<u>Tasks</u>	<u>Dates</u>
Successor Agency review/approval of First Amendment	July 31, 2012
Oversight Board approval of First Amendment	August 7 2012
Review of Oversight Board decision by DOF (if DOF exercises right to review)	August – September 2012
Completion of Connections Housing	December 2012 – January 2013

Project Benefits – The proposed project would:

- Provide transitional housing and permanent supportive housing to meet the housing needs of the chronically homeless;
- Provide a human service facility that provides assistance to people who are homeless or at risk of homelessness;
- Provide removal of blight by rehabilitating a designated historic building; and
- Pursue a diversity of facilities to meet the long- and short-term medical needs of downtown residents, the poor visitors and employees.

Conclusion

Staff requests that the Oversight Board approves the proposed First Amendment to incorporate revisions to the project's budget, financing and distribution of additional proceeds as discussed in this report.

BOARD ACTION: Action Time: 3:38 PM

MOTION BY JAMES DAVIES TO ADOPT RESOLUTION. Second by Bonnie Ann Dowd.

Passed by the following vote:

Yea: Bonnie Ann Dowd, Maureen Stapleton, Mark Nelson, Peter Q. Davis, James Davies

Nay: (None);

Recused: (None);

Not Present: Ron Roberts, Andra Donovan.

ITEM 5 – Report from the Independent Legal Counsel REGARDING LEGAL QUESTIONS RAISED AT THE OVERSIGHT BOARD MEETING OF JULY 17, 2012

ITEM DESCRIPTION:

Informational item.

STAFF RECOMMENDATION:

Receive verbal report.

SUPPORTING INFORMATION:

At the Oversight Board meeting of July 17, 2012 the Oversight Board requested that the Independent Legal Counsel report back to the Board regarding questions raised during the presentation of Item 1 a report from the Successor Agency regarding analysis of Assembly Bill 1484 and its effect on the roles and responsibilities of the Successor Agency and Oversight Board Roles.

Public Comments with no position provided by: Mel Shapiro

BOARD ACTION: Action Time: 3:39 PM

MOTION BY MARK NELSON TO WAIVE ATTORNEY CLIENT PRIVILEGE FOR TWO MEMOS PROVIDED BY INDEPENDENT LEGAL COUNSEL. Second by Peter Davis.

Passed by the following vote:

Yea: Bonnie Ann Dowd, Maureen Stapleton, Mark Nelson, Peter Q. Davis, James Davies

Nay: (None);

Recused: (None);

Not Present: Ron Roberts, Andra Donovan.

ADJOURNMENT:

The meeting was adjourned by Chair Mark Nelson at 4:02 p.m.