



## THE CITY OF SAN DIEGO

DATE ISSUED: February 23, 2012 REPORT NO: RTC-12-014

ATTENTION: Honorable Chair and Members of the City Council  
Docket of February 28, 2012

SUBJECT: Second Amended and Restated Enforceable Obligation Payment Schedule ("Updated EOPS") and Initial Draft of Recognized Obligation Payment Schedule ("Initial Draft ROPS")

COUNCIL DISTRICTS: 1, 2, 3, 4, 5, 6, 7, 8

STAFF CONTACT: Janice Weinrick 236-6250, Scott Mercer 236-6242

REFERENCES:

1. January 24, 2012 Report to Redevelopment Agency RA-12-01 Agency Amended and Restated Enforceable Obligations Schedule
2. January 10, 2012 Report to City Council RTC-12-03 City Election to Serve as Successor Agency
3. September 13, 2011 Report to Redevelopment Agency RA-11-29 Agency Initial Enforceable Obligations Schedule

\*\*This item is being presented to the City Council in its capacity as the board of the local redevelopment successor agency, officially known as the City of San Diego, solely in its capacity as the designated successor agency of the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("Successor Agency").

REQUESTED ACTION: Should the Successor Agency adopt the proposed Updated EOPS identifying all of the Successor Agency's "enforceable obligations" and authorize the completion of the Initial Draft ROPS for timely submittal to the San Diego County Auditor-Controller identifying the Successor Agency's "recognized payment obligations" for the period January 1, 2012 through June 30, 2012 pursuant to Assembly Bill x1 26 ("AB 26")?

STAFF RECOMMENDATION: It is recommended that the Successor Agency approve the requested actions.

SUMMARY: On January 10, 2012, the City Council designated the City of San Diego ("City") to serve as the Successor Agency to the former Redevelopment Agency of the City of San Diego ("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 pursuant to AB 26.

The Successor Agency is required to modify (as may be necessary) and adopt the most current version of the Former RDA's EOPS as the Successor Agency's EOPS and to prepare the Initial



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Draft ROPS for submittal review, certification and approval. As discussed below, the EOPS and the ROPS govern the Successor Agency's payment of enforceable obligations under AB 26.

BACKGROUND:

AB 26 and AB 27 were passed by the State Legislature on June 15, 2011, and signed by Governor Edmund G. Brown Jr. on June 28, 2011. AB 26 immediately suspended all new redevelopment activity and dissolved all redevelopment agencies effective October 1, 2011. AB 27 established a voluntary alternative program whereby a redevelopment agency would be exempt from the dissolution measures of AB 26 if the legislative body were to enact an ordinance on or before October 1, 2011 to comply with the requirements of the "voluntary" payment program provided with AB 27. On August 1, 2011, the City and the Former RDA elected to "Opt-In" and to comply with the requirements of AB 27.

After redevelopment proponents filed litigation challenging AB 26 and AB 27 in July 2011, the California Supreme Court ("Court") issued a partial stay of those two bills on August 11, 2011 and further modified the stay on August 17, 2011. The modification expanded the operative provisions of AB 26 to include Sections 34167.5 through 34169.5, thereby activating provisions, including but not limited to, the requirement for redevelopment agencies to prepare and submit Enforceable Obligation Payment Schedules. These provisions applied even to jurisdictions like San Diego, who had earlier elected to Opt-In under AB 27.

The Former RDA prepared and adopted an original EOPS on September 13, 2011, and submitted the document to the State Controller, State Department of Finance, and the County Auditor-Controller pursuant to AB 26, specifically Health and Safety Code Section 34169(g). In compliance with AB 26, the original EOPS included payment schedules for the months September through December 2011.

The Court's final opinion, issued on December 29, 2011, upheld AB 26, invalidated AB 27, and concluded that AB 26 could be enforced independently from AB 27. The Court's opinion set in motion short time frames for agencies and legislative bodies to take necessary actions to comply with the unwinding of the redevelopment agencies pursuant to AB 26.

On January 10, 2012, the City Council designated the City to serve as the Successor Agency to the Former RDA and to retain the Former RDA's housing assets and assume the Former RDA's housing responsibilities pursuant to AB 26.

On January 31, 2012, the Former RDA adopted an Amended and Restated EOPS for the period January 1, 2012 through June 30, 2012, replacing the EOPS covering the period September 1, 2011 through December 31, 2011. This Amended and Restated EOPS was transmitted to the City as Successor Agency, State Department of Finance ("DOF"), State Controller, and County Auditor-Controller. None of the State or County entities objected to the Amended and Restated EOPS during the applicable review period.

On February 1, 2012, the Former RDA dissolved and its rights, powers, duties and obligations vested in the Successor Agency. The Successor Agency and its Oversight Board (which is expected to be formed by May 2012) will oversee the winding down of the Former RDA's affairs and the liquidation of the Former RDA's unencumbered assets for distribution to counties, school districts and other local public agencies.

DISCUSSION:

The Successor Agency is designated to administer existing enforceable obligations of the Former RDA and to wind down the operations of the Former RDA, subject to the review and approval of the Oversight Board and certain government entities, including the County Auditor-Controller, the State Controller and the DOF.

Pursuant to Health and Safety Code Section 34177, the Successor Agency is required to assume the following responsibilities:

- continue to make payments due for Enforceable Obligations (see Attachment 1 for a summary of what is considered an Enforceable Obligation);
- maintain reserves required by indentures governing outstanding redevelopment agency bonds;
- perform obligations required pursuant to any Enforceable Obligation;
- prepare a draft ROPS (including the identification of funding sources) for each six-month period of each fiscal year, for approval by the Oversight Board;
- remit the unencumbered balance of the Former RDA's funds to the County Auditor-Controller for distribution to the taxing entities, including but not limited to the unencumbered balance of the Low and Moderate Income Housing Fund;
- continue to oversee development of properties until the contracted work has been completed or transferred to other parties;
- ensure that bond proceeds are used for the purposes for which the bonds were sold, unless the purposes can no longer be achieved, in which case bond proceeds can be utilized to defease the bonds;
- dispose of the Former RDA's unencumbered assets and properties expeditiously, in a manner aimed at maximizing value;
- remit to the County Auditor-Controller, for pro rata distribution to local taxing entities, all proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the Former RDA;
- enforce all of the Former RDA's rights for the benefit of the local taxing entities, including collecting loans, rent and other revenues due to the Former RDA;
- effectuate the transfer of housing functions and assets to the appropriate entity (in this instance, the City also serves as the housing successor agency);
- expeditiously unwind the affairs of the Former RDA; and
- prepare an administrative budget for each six-month period of each fiscal year, for approval by the Oversight Board.

Although AB 26 is not entirely clear on this point, Health and Safety Code Section 34177(a)(1) appears to require the Successor Agency, at the earliest practicable opportunity, to approve the most recent EOPS that has been adopted by the Former RDA, but to remove from the EOPS any agreements between the City and the Former RDA, subject to limited exceptions (as discussed below). Section 34177(a)(1) also states that any amendment to the EOPS is subject to the approval of the Oversight Board as soon as the Oversight Board has sufficient members to form a quorum. It is not entirely clear whether the DOF or any other entity has the right to review and approve amendments to the EOPS made by the Successor Agency. At this time, the agreements between the City and the Former RDA included in the Amended and Restated EOPS have been retained in the Updated EOPS because legal arguments can be made to the effect that those agreements have been validated by operation of law and cannot be retroactively voided by AB 26. This issue has not yet been resolved by the Supreme Court's decision or any other court.

Pursuant to Health and Safety Code Sections 34177 – 34178, including modified timelines established by the Court's final opinion, the Successor Agency must take the following actions to initiate the wind down process:

- create a Redevelopment Obligation Retirement Fund;
- review the Former RDA's most current EOPS and remove payments associated with agreements excluded from the definition of enforceable obligations under Health and Safety Code Section 34171(d)(2);<sup>1</sup>
- adopt the modified EOPS as the Successor Agency's EOPS;
- submit the Successor Agency's EOPS for approval by the Oversight Board as soon as the board has sufficient members to form a quorum;
- prepare the Initial Draft ROPS for the period January 31, 2012 – June 30, 2012 and submit the draft to the County Auditor-Controller by March 1, 2012, for review and certification as to its accuracy pursuant to Health and Safety Code Section 34182;<sup>2</sup>

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<sup>1</sup> Section 34171(d)(2) states that, effective as of February 1, 2012, the definition of "enforceable obligation" does not include any agreements, contracts, and arrangements between the former redevelopment agency and its sponsoring city. This exclusion is reiterated in Section 34178(a), which further states that any such agreements, contracts, and arrangements are invalid and shall not be binding on the successor agency. There are limited exceptions to this exclusion, as described in Attachment 1 hereto.

<sup>2</sup> The County Auditor-Controller is required to certify the initial ROPS by April 15, 2012, and to conduct or cause to be conducted an agreed-upon procedures audit ("AUP Audit") of each former redevelopment agency in the County by July 1, 2012. The purpose of the audit is to establish each redevelopment agency's assets and liabilities, to document and determine each redevelopment agency's pass through payment obligations to other taxing agencies, to document and determine both the amount and the terms of any indebtedness incurred by the redevelopment agency, and to certify the initial ROPS. The County Auditor-Controller may charge the Redevelopment Property Tax Trust Fund for any costs incurred by the County Auditor-Controller for complying with this requirement. The County Auditor-Controller has acknowledged that it is very unlikely that the initial ROPS can be certified by the April 15 deadline, given that the certification of the initial ROPS will rely on the completion of the AUP Audit, which is not expected to occur until close to the July 1 deadline.

- submit the Successor Agency's ROPS, once certified by the County Auditor-Controller, for approval by the Oversight Board;
- submit the Successor Agency's ROPS, once approved by the Oversight Board, to the County Auditor-Controller, the DOF and the State Controller;
- post the final approved ROPS on the Successor Agency's web site;
- submit a draft second ROPS for the period July 1, 2012 through December 31, 2012, to the County Auditor-Controller by June 30, 2012 (although the County Auditor-Controller has requested delivery of this document by April 15, 2012);
- submit the Successor Agency's draft ROPS to the Oversight Board for approval; and
- submit the Successor Agency's approved ROPS to the County Auditor-Controller, the DOF and the State Controller, and post it on the Successor Agency's web site.

The DOF and the State Controller each have the authority to require any documentation associated with the EOPS and any ROPS to be provided to them in a manner of their choosing. Any taxing entity, the DOF, and the State Controller have standing to file a judicial action to prevent a violation under Section 34177 and to obtain injunctive or other appropriate relief.

The dissolution process and time frame as set out in AB 26 were based upon the dissolution of former redevelopment agencies on October 1, 2011. Agencies that did not elect to participate in the voluntary payment program pursuant to AB 27 were to be subject to the time frames for dissolution and establishment of successor agencies. Originally, AB 26 provided a relatively reasonable sequence of actions and time frames for the preparation, review, and certification of the EOPS and ROPS based upon a dissolution date of October 1, 2011. At that time, it was also anticipated that the vast majority of redevelopment agencies would participate in the voluntary payment program, such that they would not need to prepare and submit these complex documents for ongoing review, certification and management by various entities.

The Court's decision in January 2012 extended some, but not all, of the time frames in AB 26 by four months. This partial adjustment of dates created extraordinarily short time frames for the Successor Agency to prepare required payment schedules and for the Successor Agency, County Auditor-Controller, DOF and State Controller to fulfill their duties and responsibilities. As evidenced by the discussion in footnote 2 above, some of the adjusted timelines related to the early implementation of AB 26 are completely unworkable. However, the State Legislature has not adopted new legislation to clarify various gaps and ambiguities in AB 26 or to establish a more practical set of deadlines for implementation of AB 26.

On February 15, 2012, the office of the San Diego County Auditor-Controller convened a meeting with local representatives from cities with newly-formed successor agencies to discuss numerous issues associated with the implementation of AB 26. Topics included the anticipated business cycle related to the dissolution process, timelines for key activities, and the County's expectations regarding required reports (i.e., EOPS, ROPS and audits). The County Auditor-Controller conceded that technical compliance with all of the times frames in AB 26 would not be feasible due to the overlapping nature of the partial time frame adjustments and sheer mass of documents, reviews, audits and certifications required. The County Auditor-Controller is

seeking guidance from the DOF on a variety of issues in order to provide an effective transition for all 17 successor agencies throughout the County.

For the first time during the February 15 meeting, the County Auditor-Controller distributed copies of a set of templates (Attachment 2) for cities to use in preparing the Initial Draft ROPS for submittal to the County Auditor-Controller for audit and certification. This template is considerably different from the format that the Former RDA and the Successor Agency have used to create prior EOPS documents.

*What is the purpose of the Updated EOPS?*

As mentioned above, AB 26 appears to require the Successor Agency, at the earliest practicable opportunity, to approve the most recent EOPS that has been adopted by the Former RDA, but to remove from the EOPS any agreements between the City and the Former RDA, subject to limited exceptions. Compared to the prior version of the EOPS, the proposed revisions in the Updated EOPS primarily include: (i) the addition of some descriptive language to reinforce the validity of certain line items; (ii) the deletion of several minor line items that were determined to be unnecessarily duplicative; (iii) the addition of some new line items determined to be enforceable obligations, based on further analysis; and (iv) the addition of new "reservation of rights" language related to the retention and expenditure of low and moderate income housing funds and bond proceeds. As described above, the Updated EOPS will continue to include payments owed under various agreements between the City and the Former RDA that AB 26 purports to invalidate.

During recent Council meetings, representatives of the San Diego Housing Federation have requested a careful evaluation of whether the Updated EOPS needs to incorporate new line items related to the retention and expenditure of low and moderate income housing funds. In addition, other affordable housing advocates, such as the Western Center on Law and Poverty, have asserted that each EOPS should include certain expenditures related to the future use of housing funds, such as expenditures for the production of inclusionary housing. Given the complexity of the housing fund issues, City staff and the City Attorney's Office have collaborated to prepare a separate document (Attachment 3) describing the treatment of those issues in the Updated EOPS (Attachment 4) to be considered by the City Council on February 28, 2012.

*What is the approval process for the Initial Draft ROPS?*

Until the Initial Draft ROPS has been certified and finally approved, the Updated EOPS will be the governing document with respect to any payments made by the Successor Agency. The deadline under AB 26 for the Successor Agency's submittal of the Initial Draft ROPS to the County Auditor-Controller is March 1, 2012.

A very significant amount of work is associated with City staff's conversion of EOPS data to the County Auditor-Controller's preferred template for the ROPS, first received on February 15, 2012, and the addition of information related to the source of payment for each enforceable

obligation. Accordingly, the complete version of the Initial Draft ROPS will not be available for the City Council's review and approval on February 28, 2012, without causing a violation of advance public noticing requirements under the Ralph M. Brown Act. City staff's current intent is to prepare and submit to the County Auditor-Controller, by the March 1, 2012 deadline or as soon thereafter as practicable, the Initial Draft ROPS for review, audit and certification. City staff is seeking the City Council's authorization to submit the Initial Draft ROPS to the County Auditor-Controller promptly, utilizing the same basic information contained in the Updated EOPS. City staff will then present the Initial Draft ROPS to the City Council for its review and approval at a subsequent meeting at the earliest opportunity in March 2012.

As the County Auditor-Controller's review of the Initial Draft ROPS begins, the Successor Agency will be preparing a second draft ROPS for the period July 1, 2012 – December 31, 2012. The second draft ROPS will be presented to the City Council for review and approval prior to the County-Auditor Controller's preferred submittal deadline of April 15, 2012, and possibly in conjunction with the City Council's review and approval of the Initial Draft ROPS.

Only the Initial Draft ROPS requires certification by the County Auditor-Controller through an audit process. The overlapping submittal deadlines will likely result in the need to make further adjustments to the second draft ROPS covering the second half of 2012.

*What is the difference between the EOPS and the ROPS?*

Generally, the EOPS is a universal list of all of the Former RDA's enforceable obligations payable at any time in the future, whereas each ROPS is a forward-looking list of payments that are owed toward enforceable obligations during the applicable six-month fiscal period. Only payments identified in the EOPS are allowed to be made until the first ROPS becomes operative.

The initial EOPS was first prepared by the Former RDA to provide a universal list of all of the Former RDA's enforceable obligations. Health and Safety Code Section 34169(g) required the initial EOPS to list all of the "enforceable obligations" within the meaning of Section 34167(d).

Effective as of February 2, 2012, Health and Safety Code Section 34177(a)(1) apparently requires the Successor Agency to approve the most current version of the Former RDA's EOPS based on a narrower definition of "enforceable obligations" set forth in Health and Safety Code Section 34171(d)(1) and to generally remove agreements between the City and the Former RDA from the EOPS, with limited exceptions.

The EOPS must provide the following information about each enforceable obligation:

- the project name associated with the obligation;
- the payee;
- a short description of the nature of the work, product, service, facility or other thing of value for which the payment is being made; and

- the amount of payments obligated to be made, by month, (initially) through December 31, 2011, subsequently replaced by the Amended and Restated EOPS for the period January 1, 2012 through June 30, 2012 caused by the “reset” of pertinent dates by the Court decision.

The ROPS is the governing document as to payments that are allowed to be made by the Successor Agency during each applicable six-month period. According to AB 26, the ROPS supersedes the annual Statement of Indebtedness, which will no longer be prepared or have any effect under California Community Redevelopment Law. The ROPS is prepared for each six-month period until all enforceable obligations have been met or for the remainder of the time period during which the Former RDA would have been authorized to obligate tax increment had the Former RDA not been dissolved, whichever occurs first.

The ROPS includes the information provided in the EOPS and provides the following for each enforceable obligation within the applicable six-month period:

- the minimum payment amount,
- due dates of payments required by enforceable obligations, and
- the source of payment, such as:
  - Low and Moderate Income Housing Fund;
  - bond proceeds;
  - reserve balance;
  - administrative cost allowance;
  - the Redevelopment Property Tax Trust Fund (but only to the extent no other funding source is available or the obligation requires the payment from property tax revenues); and
  - other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency, as approved by the Oversight Board.

The ROPS is not considered valid until the following conditions have been met:

- a draft ROPS is prepared by the successor agency;
- the County Auditor-Controller certifies the initial ROPS pursuant to Section 34182(a);
- the certified ROPS is submitted to and duly approved by the Oversight Board; and
- a copy of the approved ROPS is submitted to the County Auditor-Controller, the DOF and State Controller’s office, and posted on the successor agency’s internet web site.



*Has the DOF or Controller submitted any comments on the submittal of the Prior EOPS?*

On January 31, 2012, the Former RDA electronically transmitted the Amended and Restated EOPS to the DOF, and sent copies via certified mail to the County Auditor-Controller and State Controller. City staff received notices certifying receipt by the County Auditor-Controller and State Controller. City staff also confirmed telephonically that the DOF received the electronic transmittal of the document on January 31, 2012. No formal comments were received, but the DOF informed City staff that the DOF and the State Controller are working together on review of the submittals and that an auditor has been assigned to review the Former RDA's submittal, although they would be looking to the County Auditor-Controller to provide input through the review, audit and certification of the Initial Draft ROPS.

FISCAL CONSIDERATIONS:

The fiscal impact to the Successor Agency is dependent on the review and potential challenge of the Updated EOPS and the subsequent ROPS documents. AB 26 limits the "administrative cost allowance" available to the Successor Agency. The actual level of funds that the City may utilize in fulfilling its role as the Successor Agency will not be known until the County Auditor-Controller, Oversight Board, DOF, and State Controller review and potentially challenge items listed in the Updated EOPS and the Initial ROPS, and until any such challenge is finally resolved.

Each ROPS and each six-month administrative budget to be approved by the Successor Agency, subject to certification by the County Auditor-Controller and review and approval by the Oversight Board, will determine the exact amount of administrative cost allowance available to the Successor Agency for every six-month fiscal period. The administrative cost allowance for the Successor Agency is defined in Section 34171(b) as an amount that, subject to the approval of the Oversight Board, is payable from the property tax revenue of up to five percent (5%) of the property taxes allocated to the Successor Agency for the 2011-12 fiscal year and up to three percent (3%) of the property taxes allocated to the Redevelopment Obligation Retirement Fund administered by the Successor Agency for each fiscal year thereafter. The DOF has indicated in a recent guidance document that the payment schedules under AB 26 may include expenses for ongoing project management and construction inspection where required on specific projects, without subjecting such expenses to the cap on the administrative cost allowance.

Any costs to the Successor Agency beyond those allowed by AB 26 would impact the City's general fund. These costs could be offset by increased property tax revenues distributed to the City, given that a portion of the tax increment revenue previously allocated to the Former RDA will be reallocated to the City and other local taxing entities as general property taxes, to the extent that the Successor Agency does not need the continued property tax revenue in order to pay enforceable obligations. It is anticipated that the City will receive approximately 17% of the general property taxes that are reallocated to local taxing entities in accordance with AB 26.

In advance of the Former RDA's approval of the Amended and Restated EOPS, the Office of the City Attorney issued a memorandum dated January 27, 2012, explaining potential risks to the City's general fund associated with actions to be taken and payments to be made by the Successor Agency.

ENVIRONMENTAL REVIEW: The proposed action is not a "project" within the meaning of the California Environmental Quality Act ("CEQA"), specifically CEQA Guidelines section 15378(b)(4)-(5), and thus is not subject to CEQA pursuant to CEQA Guidelines section 15060(c)(3). The approval of the Updated EOPS is a fiscal activity that relates to the future administration of redevelopment operations and is being conducted in order to comply with the provisions of AB 26. The approval of the Updated EOPS will not result in the commitment to any new, specific project that may cause a physical change in the environment.


PREVIOUS AGENCY and/or COUNCIL ACTION: On July 18, 2011, the City Council introduced an Opt-In Ordinance pursuant to AB 27, whereby the City commits to utilize solely redevelopment funds to make annual payments to the County Auditor-Controller in exchange for the Agency's exemption from the provisions of AB 26 and the Former RDA's continued operation pursuant to California Community Redevelopment Law. In addition, the Former RDA and City approved a Remittance Agreement, whereby the Former RDA will transfer redevelopment funds to the City in an amount sufficient for the City to make the required payments to the County Auditor-Controller. The Opt-In Ordinance was enacted by the City Council, and signed by the Mayor, on August 1, 2011. The Former RDA approved the original EOPS on September 13, 2011, covering the period of September 1, 2011 through December 31, 2011, and approved the Amended and Restated EOPS on January 31, 2012, covering the period of January 1, 2012 through June 30, 2012. On January 10, 2012, the City Council took action to serve as the Agency's successor agency under AB 26. On February 13, 2012, the City Council adopted a resolution establishing certain policies and procedures that will govern the future operation of the Successor Agency.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Redevelopment Project Area Committees, the Southeastern Economic Development Corporation Board, the Centre City Development Corporation Board, and pertinent community groups have received updates on the legislative matters that have been considered by the State Legislature since January 2011. There has been no opportunity for additional formal community participation or public outreach on the Updated EOPS due to the short time frame provided to prepare the Updated EOPS for the City Council's consideration within the short timelines under AB 26.

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KEY STAKEHOLDERS AND PROJECTED IMPACTS: Key stakeholders include the communities within the boundaries of the fourteen (14) redevelopment project areas as well as the communities outside of the project areas who benefit from the revitalization of the project areas. Key stakeholders also include the local vendors, consultants, development partners and the City.

Respectfully submitted,



Janice L. Weinrick  
Assistant Director  
Redevelopment Department



Jay M. Goldstone  
Chief Operating Officer

Attachments:

1. AB 26 Enforceable Obligations
2. County Auditor-Controller's ROPS submittal documents
3. Responses to Affordable Housing Comments Raised Regarding the Amended and Restated Enforceable Obligation Payment Schedule
4. Updated EOPS