

RESOLUTION NO. 2012 - 17

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY APPROVING
THE DUE DILIGENCE REVIEW OF LOW AND MODERATE INCOME HOUSING
FUND, AS REQUIRED BY HEALTH AND SAFETY CODE SECTION 34179.5,
AND AUTHORIZING RETENTION OF FUNDS BY THE SUCCESSOR AGENCY
PURSUANT TO HEALTH & SAFETY CODE SECTION 34179.6(c)

WHEREAS, the Oversight Board (“Oversight Board”) for the Successor Agency (“Successor Agency”) to the Community Development Commission as the National City Redevelopment Agency has been established to take certain actions as required by the Health and Safety Code with respect to winding down the affairs of the National City Redevelopment Agency; and

WHEREAS, Health and Safety Code section 34179.5 mandates that every Successor Agency employ a licensed accountant to complete a “due diligence review” (“Due Diligence Review”) of the Low Moderate Income Housing Fund to determine the un-obligated balances available for transfer to taxing entities and that the results of that Due Diligence Review be submitted to the California Department of Finance (“DOF”) and other specified entities; and

WHEREAS, Health and Safety code section 34179.6 requires that the Oversight Board approve and transmit the result of the aforementioned Due Diligence Review to the DOF and other specified entities; and

WHEREAS, Health and Safety Code section 34179.6 further requires that the Oversight Board convene a “public comment session” at least five business days before the Oversight Board holds an approval vote on the Due Diligence Review; and

WHEREAS, the Successor Agency retained a licensed accountant, Mayer Hoffman McCann, P.C. (which was approved by the San Diego County Auditor and Controller); the licensed accountant conducted and completed the Due Diligence Review; and the results were subsequently transmitted to the DOF and the required entities by the Successor Agency; and

WHEREAS, the Oversight Board convened a duly noticed “public comment session” regarding the Due Diligence Review in accordance with Health and Safety Code section 34179.6 on October 17, 2012, at which time the public was afforded the opportunity to provide comment to the Oversight Board; the public comment session was closed with no comment being offered either orally or in writing on October 24, 2012; and

WHEREAS, the Successor Agency reserves its right to amend the Due Diligence Review as may be necessary to capture all the obligations the Successor Agency may

have in the performance of its duties, subject to any obligation of the Oversight Board to approve such amendments; and

WHEREAS, pursuant to the requirements of Health and Safety Code section 34179.6, the Successor Agency submits the attached Due Diligence Review (Exhibit 1) for consideration and approval by the Oversight Board; and

WHEREAS, on May 30, 2012 the Oversight Board approved Resolution No. 2012-09, approving the July 1, 2012 through December 31, 2012 Recognized Obligation Payment Schedule ("ROPS 2"); and

WHEREAS, on August 15, 2012 the Oversight Board approved Resolution No. 2012-15, approving the January 1, 2013 through June 30, 2013 Recognized Obligation Payment Schedule ("ROPS 3" and, collectively with ROPS 2, the "ROPS"); and

WHEREAS, on October 12, 2012 the Successor Agency, in response to DOF rejecting a number of items on the approved ROPS 3, requested a meet and confer pursuant to Health and Safety Code Section 34177(m) as to all but two items (items designated as line items 91 and 31 on ROPS 3 were not appealed) that were rejected by DOF on ROPS 3; and

WHEREAS, the Due Diligence Review calculated the amount of current unrestricted balances necessary for retention in order to meet enforceable obligations for the current fiscal year (2012-2013) as required by Health and Safety Code section 34179.5(c)(5)(E) and such information is included in Exhibit D to the Due Diligence Review. The amount identified on Exhibit D to the Due Diligence Review indicates that there are net obligations listed on the ROPS (even disregarding those that have been rejected by DOF) that exceed the actual and expected funding of the Successor Agency for the 2012-2013 fiscal year; and

WHEREAS, page 6 of the Due Diligence Review concluded that "all current balances . . . are needed to be retained to pay enforceable obligations as they become due through June 30, 2013"; and

WHEREAS, Health and Safety Code Section 34179.6(c) empowers the Oversight Board (subject to DOF approval) to authorize the Successor Agency to retain current balances identified in 34176.9(c)(5)(E) provided that the Oversight Board identifies the amount, source and purpose of the funds being retained; and

WHEREAS, the amount of cash balances that the Oversight Board authorizes the Successor Agency to retain is \$8,418,206 as identified on Exhibits A and B of the Due Diligence Review; and

WHEREAS, the source of the \$8,418,206 is the asset balance held in the Low Moderate Income Housing Fund as of June 30, 2012 as identified on Exhibit B to the Due Diligence Review; and

WHEREAS, Exhibits B and D of the Due Diligence Report identifies FY 2012-2013 enforceable obligations that exceed projected available funding by \$15,873,200; thus, even if the June 30, 2012 asset balance of \$8,418,206 is retained, the current fiscal year enforceable obligations exceed expected available funding; and

WHEREAS, the purpose of retaining the current fund balance of \$8,418,206 is to permit the Successor Agency to meet its enforceable obligations as summarized on Exhibit D to the Due Diligence Review and as further detailed with specificity in the ROPS, which retained balances are needed even if the items rejected by the DOF on ROPS 3 are not included as obligations of the Successor Agency;

NOW, THEREFORE, THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPEMENT AGENCY RESOLVES AS FOLLOWS:

Section 1. The foregoing Recitals are incorporated into this Resolution by this reference.

Section 2. Pursuant to Health and Safety Code section 34179.6, the Oversight Board hereby approves Due Diligence Review attached hereto as Exhibit 1 and fully incorporated by this reference, except as has specifically been modified or rejected by the Oversight Board. The Due Diligence Review is that "due diligence review" referred to Health and Safety Code sections 34179.5 and 34179.6 and shall be interpreted and applied in all respects in accordance with such sections and the California Redevelopment Law ("CRL"), to the fullest extent permitted by law; however, the Due Diligence Review shall only be applicable to and binding on the Successor Agency to the extent that AB X1 26 (and as amended by AB 1484) is applicable to the Successor Agency.

Section 3. The Executive Director and the Finance Director of the Successor Agency (and their designees) are hereby authorized and directed to evaluate and execute necessary changes to the Due Diligence Review (including changes to formatting as may be required by DOF) as may be appropriate and/or as required by AB X1 26 and/or AB 1484 whether pursuant to its terms, by court order, or as otherwise required by law.

Section 4. The Executive Director of the Successor Agency is further authorized and directed to notify and forward to the County Auditor and Controller, Department of Finance, the State Controller's Office, and any other entity required by law to obtain a copy of this Resolution and the Due Diligence Review as may be required by AB 26 and/or AB 1484.

Section 5. Pursuant to Health and Safety Code Section 34179.6(c), the Oversight Board authorizes the retention of \$8,418,206. The source of these funds are the June 30, 2012 asset balances in the Successor Agency's Low Moderate Income Housing Fund as further identified and described in Exhibit B of the Due Diligence Review. The purposes for which these funds are to be retained are found by the Oversight Board to be for the Successor Agency to meet its enforceable obligations in the amount of \$15,873,200 as described on Exhibit D of the Due Diligence Report. Even with retention of the current fund balances, the total enforceable obligations listed on the FY 2012-2013 ROPS exceeds projected available revenue. The Oversight Board specifically finds that retained balances are needed even if the items rejected by the DOF on ROPS 3 are not included as obligations of the Successor Agency.

Section 6. The Oversight Board, in furtherance of its fiduciary duties to the taxing entities and the holders of enforceable obligations, hereby finds that the retention of the funds identified for the purposes described in Section 5 of this Resolution is in the best interest of the taxing entities and the holders of the enforceable obligations listed in the ROPS because retaining the identified funds to satisfy these obligations is necessary to satisfy enforceable obligations of the Successor Agency. Further, the Oversight Board finds that retaining these funds, in the long run, is in the interest of the taxing entities because absent these funds being retained, the obligations in the ROPS may be unable to be met, potentially exposing the Successor Agency to protracted dispute with holders of enforceable obligations, with the potential to result in more costly delay in winding down the operations of the Successor Agency.

Section 7. The Oversight Board has also determined (to the extent it is required to do so) that approval of the Due Diligence Report is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because the Due Diligence Review is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

Section 8. This Resolution shall take effect upon the date of adoption.

Section 9. The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

The foregoing resolution was duly and regularly adopted at a regular meeting of the Oversight Board for the Successor Agency to Redevelopment Agency for the City of National City held on the 24th day of October, 2012, by the following vote:

Ayes: Aguirre, Carson, Desrochers, Donaldson, Hentschke, Morrison, Perri

Noes: None

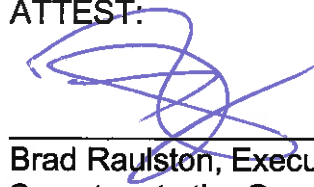
Absent: None

Abstain: None



Ron Morrison
Oversight Board Chair

ATTEST:



Brad Raulston, Executive Director
Secretary to the Oversight Board

Approved as to form:



Bethelwil Wilson
Cummins & White, LLP
Oversight Board Counsel