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Title: Staff Report for Resolution of the Successor Agency to the Redevelopment Agency of the City of San Leandro Approving a Recognized Obligation Payment Schedule for July through December 2013 for Enforceable Obligations of the Former Redevelopment Agency Pursuant to Health and Safety Code Section 34177

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Staff Report for Resolution of the Successor Agency to the Redevelopment Agency of the City of San Leandro Approving a Recognized Obligation Payment Schedule for July through December 2013 for Enforceable Obligations of the Former Redevelopment Agency Pursuant to Health and Safety Code Section 34177

RECOMMENDATIONS

Staff recommends that the governing board of the Successor Agency to the Redevelopment Agency of the City of San Leandro adopt a Resolution approving a Recognized Obligation Payment Schedule for the period from July 1, 2013 through December 31, 2013.

BACKGROUND

Pursuant to Assembly Bill x1 26, on January 9, 2012, the City Council affirmed its decision to have the City serve as the Successor Agency to the former Redevelopment Agency (Agency). Assembly Bill 1484, passed by the State Legislature on June 27, 2012, modified AB x1 26 to clarify that successor agencies are separate legal entities from the city that formed the redevelopment agency. Under AB x1 26, the Successor Agency, is obligated to prepare a Recognized Obligation Payment Schedule ("ROPS") every six months that lists all enforceable obligations payable during the next six month period. Approval of the ROPS by the Oversight Board is also required prior to submission to the California Department of Finance (DOF). The Successor Agency can only pay obligations that are listed on the ROPS and approved by the DOF.

Analysis

A primary responsibility of the Successor Agency is to oversee the payment of Enforceable Obligations. Enforceable Obligations are defined as:

- Bonds including debt service reserve set asides and any other required payments;
- Loans borrowed by the Agency;
- Payments required by the federal or state governments;
- Pension and unemployment payments for Agency employees;
- Judgments, settlements or binding arbitration decisions; and
- Any legally binding and enforceable contract that does not violate the debt limit or public policy.

The obligations listed on the ROPS for July through December 2013 are the same as those in the previous ROPS, with three additions which are noted below.

City-Agency Agreements

After the approval of each previous version of the San Leandro ROPS, the DOF exercised its right to conduct a review of the list of Enforceable Obligations. Upon completion of those reviews, the DOF informed the Successor Agency that it does not consider some items to be enforceable because AB x1 26 does not recognize agreements between a redevelopment agency and the city that created it. This determination related to a loan from the City General Fund to the Joint Redevelopment Project Area with a balance of \$2.1million and four Cooperative Agreements to fund \$9.1 million in capital improvement projects.

In response to the DOF's initial determination, the Successor Agency and Oversight Board exercised a power granted in Health and Safety Code Section 34178 to re-authorize those agreements in May 2012. Assembly Bill 1484, which went into effect on June 27, 2012, revises that section of the code, limiting an Oversight Board's ability to re-authorize agreements. DOF's continued objection suggests that it interprets AB 1484 to have a retroactive effect on these actions.

After the denial of these agreements on the ROPS for January-June 2013, staff requested and received a meet-and-confer appointment with DOF staff and presented full documentation of the re-authorizations executed in May 2012. After that meeting, however, DOF has continued to deny the validity of these obligations. The Successor Agency's legal counsel advises that these obligations are valid and legal. No other administrative remedies are available to the Successor Agency at this point. A lawsuit to challenge the DOF's interpretation may be necessary in the future. The obligations remain on the ROPS but DOF has prohibited the Successor Agency from receiving any funding under them.

If it is unable to establish the validity of these City-Agency agreements through other means, the Successor Agency may opt to take advantage of a clause in AB 1484 which would allow repayment of loans made by cities to redevelopment agencies upon compliance with certain requirements. That clause, however, would strictly limit the amount of the payments and requires 20 percent of all payments to be dedicated to affordable housing, among other restrictions. That clause would not provide a mechanism for restoring funding for the capital projects funded through the Cooperative Agreements.

King Parcel Settlement

One new obligation has been added to this version of the ROPS. That item covers the Successor Agency's obligation under a settlement agreement for a legal dispute related to a ground lease guarantee for property adjacent to Bayfair Center. The total amount of the obligation is \$7.75 million and the funding requested for this ROPS period is \$1 million. This obligation replaces the King

Ground Lease Guarantee.

Litigation Expenditures

Health and Safety Code Section 34171(b) states that litigation expenses do not count against the administrative budget allowance. The Successor Agency has two active or potential claims against the DOF. Both of these matters have been added to the ROPS along with estimated expenditures.

Administrative Budget

The ROPS also contains an administrative budget for the Successor Agency. Based on direction from the California Department of Finance, the amount of the administrative allowance is the greater of 3% of funds received from the Redevelopment Property Tax Trust Fund or \$250,000 annually. For San Leandro, the 3% factor will apply, resulting in an administrative allowance for this six-month period of \$157,000.

The Oversight Board is scheduled to approve this ROPS on February 27, 2013 and it will be forwarded to the DOF, the State Controller's Office and the Alameda County Auditor Controller after that action is finalized.

Previous Actions

- On January 9, 2012, the City Council affirmed its decision to have the City serve as the Successor Agency for the former Redevelopment Agency and to retain the Agency's housing assets and functions.
- On January 23, 2012, the Board of the Redevelopment Agency approved the amended EOPS.
- On April 2, 2012, May 7, 2012 and July 17, 2012 the City Council, serving as governing board of the Successor Agency, adopted ROPS for previous periods.

Fiscal Impacts

As noted above, payment of the Enforceable Obligations listed on the ROPS will be funded using funds disbursed by the County Auditor-Controller using property tax revenue deposited into the Redevelopment Property Tax Trust Fund. The General Fund (or any other City fund) does not bear any responsibility for the payment of enforceable obligations of the former Redevelopment Agency.

ATTACHMENTS

None

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