

RESOLUTION NO. 5-2012

Adopted April 10, 2012

RESOLUTION APPROVING THE INITIAL RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR JANUARY 1, 2012 TO JUNE 30, 2012 AND APPROVING THE SUPPORTING DOCUMENTATION.

WHEREAS, Under Assembly Bill No. X1 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) ("AB 26") and the California Supreme Court's decision in California Redevelopment Association v. Matosantos, No. S194861, the Redevelopment Agency of the City and County of San Francisco (the "SFRA"), together with all other redevelopment agencies in the State of California, dissolved by operation of law on February 1, 2012; and,

WHEREAS, Consistent with AB 26, on January 24, 2012 the City's Board of Supervisors approved and on January 26, 2012 the Mayor signed Resolution No. 11-12 (the "Board of Supervisors Resolution"), providing for the City to become the successor agency of the SFRA, and to acquire its housing and non-housing assets, funds and enforceable obligations, and to fulfill its rights and duties as successor agency to the SFRA under AB 26; and,

WHEREAS, Upon the SFRA's dissolution, the City, as successor agency to the SFRA under AB 26 and the Board of Supervisors Resolution, assumed the former SFRA's assets and the duty to pay and perform "enforceable obligations" of the former SFRA (including bonds and other indebtedness, loans, judgments and settlements, contracts and certain other obligations, all as more particularly defined in AB 26), subject to the terms, conditions and limitations set forth in AB 26. Those enforceable obligations of the former SFRA became the obligations of the City, as the successor agency, but such obligations are payable only from the property tax revenues (former tax increment) or other revenue sources that would have been allocated or payable to the former SFRA or from the security that the former SFRA originally provided or pledged for such obligations; and,

WHEREAS, AB 26 places successor agencies' performance of their duties under the supervision of newly established oversight boards, which are different from the local legislative bodies and which will oversee the fiscal management of future successor agency activities regarding the enforceable obligations. In performing their functions required under AB 26, the oversight boards owe fiduciary responsibilities to the holders of enforceable obligations and the taxing entities entitled to the distribution of property tax revenues under AB 26. Some actions by the oversight boards and successor agencies are also subject to discretionary review by the State Department of Finance and the State Controller under AB 26; and,

WHEREAS, The Mayor (with confirmation by the Board of Supervisors) and the taxing entities have appointed members to the oversight board of the City and County of San Francisco (the "Oversight Board"), which has already met several times and taken various actions that have become effective because the Department of Finance has not objected within the review period under Section 34179 (h) of the Health and Safety Code; and,

WHEREAS, AB 26 requires successor agencies to create Recognized Obligation Payment Schedules ("ROPS") for each six-month period (January-June, July-December), beginning January 1, 2012. Each ROPS must state the minimum payment amounts and due dates for payments required by enforceable obligations for each six-month fiscal period; and,

WHEREAS, AB 26 defines an "enforceable obligation" as meaning any of the following: (a) bonds, including debt service, reserve set-asides and related required payments; (b) loans of money borrowed by the former SFRA, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan term; (c) payments required by the Federal government; obligations to the State or imposed by State law (other than regular pass-through payments), and legally enforceable payments related to Agency employee obligations (including pension system payments or other obligations of a collective bargaining agreement); (d) legal judgments and settlements (other than pass-through payments); (e) legally binding and enforceable agreements and contracts, such as construction contracts, personal services contracts, owner participation agreements, and disposition and development agreements; (f) contracts and agreements necessary for the administration and operation of the successor agency, such as agreements to purchase or rent office space, equipment and supplies, and for carrying insurance; and (g) amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund, provided the repayment schedule is approved by the oversight board (Cal. Health & Safety Code §34171); and,

WHEREAS, For each recognized obligation, AB 26 requires the ROPS to identify one or more of the following payment sources: (1) Low and Moderate Income Housing Fund; (2) bond proceeds; (3) reserve balances; (4) "administrative cost allowance;" (5) the Redevelopment Property Tax Trust Fund (created by the City Controller for property tax revenues (former increment)) when no other funding source is available or when payment from property tax revenues is required by an enforceable obligation; and (5) other revenue sources as approved by the oversight board (Cal. Health & Safety Code §34177(1)(1)); and,

WHEREAS, AB 26 requires each successor agency and its oversight board to approve an initial ROPS for the period January 1, 2012 to June 30, 2012 inclusive; and,

WHEREAS, Under AB 26 the initial ROPS for the City as successor agency will not be valid unless the following conditions are satisfied: (1) a draft ROPS is prepared by the successor agency for the enforceable obligations of the former redevelopment agency by March 1, 2012, and from February 1, 2012 to July 1, 2012 the draft ROPS projects the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the period during which the former SFRA would have been authorized to obligate property tax increment had it not been dissolved, and shall be reviewed and certified as to accuracy by an external auditor; (2) the ROPS, after certification, is submitted to and approved by this Oversight Board; and (3) a copy of the certified ROPS is submitted to the City Controller, the State Controller and the Department of Finance, and posted on the internet website of the City as successor agency (Cal. Health & Safety Code §34177(1)(2)); and,

WHEREAS, The Department of Finance in its Frequently Asked Questions, dated February 29, 2012, requested that the initial ROPS be submitted "as soon as practical to the review agencies and the county auditor-controller, and in no case later than April 15, 2012," and in a letter of March 2, 2012 the Department of Finance urged successor agencies not to delay submittal of their ROPS if the audit of the ROPS would not be completed in time for the April 15 submittal. According to the Department of Finance: ". . . if the auditor designated by your county auditor-controller states the review of the ROPS cannot be completed by April 15, we advise you to submit your ROPS to Finance without waiting for the auditor's review. If, however, your auditor states that they will complete the ROPS review by April 15, we advise you not to submit the ROPS until the review is complete;" and,

WHEREAS, The City Controller has determined that the certification audit cannot be completed by April 15, 2012 and the successor agency has so advised the Department of Finance; and,

WHEREAS, The initial ROPS is attached to this resolution as Exhibit A, and fully incorporated in this resolution (the "Initial ROPS"); and,

WHEREAS, In addition to the duties that AB 26 places on this Oversight Board, the City delegated to this Oversight Board, through the Board of Supervisors Resolution, certain authority and responsibility regarding the implementation of three major approved development projects consistent with the integrated set of enforceable obligations governing them: (1) the Mission Bay North and the Mission Bay South Project Areas (collectively "Mission Bay"), (2) Phases One and Two of the Hunters Point Shipyard Project Area and Zone 1 of the Bayview Hunters Point Project Area (collectively, "Hunters Point Shipyard/Candlestick Point"), and (3) certain parts of the Transbay Transit Center Project Area, including Zone 1 ("Transbay"). (Mission Bay, Hunters Point Shipyard/Candlestick Point and Transbay are sometimes referred to in this resolution as the "Major Approved Development Projects."); and,

- WHEREAS, The City delegation to this Oversight Board included the authority to grant approvals under specified land use controls for the Major Approved Development Projects consistent with the approved redevelopment plans and enforceable obligations, in place of the commission of the former SFRA, with delegation to City staff consistent with the former SFRA's policies and procedures; and,
- WHEREAS, The City further delegated to this Oversight Board the right to approve changes to enforceable obligations for the Major Approved Development Projects, grant variances for individual projects, and enter into new agreements as necessary or appropriate for fulfillment of the Major Approved Development Projects, provided that this Oversight Board finds that any such changes, variances or new agreements are consistent with redevelopment plan objectives that the Board of Supervisors has approved, do not increase the amount of property tax revenues pledged to complete these projects under existing agreements that constitute enforceable obligations under AB 26, and do not materially increase the obligations of the City or materially decrease the intended public benefits to the City, and subject to any Board approval of amendments or new agreements required under Section 9.118 of the Charter or under existing agreements on behalf of the City; and,
- WHEREAS, Narratives summarizing the Major Approved Development Projects and describing all of the enforceable obligations for each of the Major Approved Development Projects are attached to this resolution as Exhibit B, and fully incorporated in this resolution (the "Major Approved Development Projects Summaries"); and,
- WHEREAS, As set forth in the Major Approved Development Project Summaries, the City's assumption of the former SFRA's enforceable obligations require the City to, among other things: (1) form community facilities districts (CFDs) to finance infrastructure and maintain parks and open space and to issue debt secured by the CFD special taxes to finance infrastructure; (2) pledge property tax revenues (former increment) and issue debt secured by those revenues to finance the construction of infrastructure and affordable housing; (3) consummate certain property transfers and public trust exchanges; (4) process land use approvals under the approved redevelopment plans and associated land use controls; and (5) not amend the existing redevelopment plans and associated land use controls without the prior consent of certain third party developers, all as more particularly described in the Major Approved Development Projects Summaries; and,
- WHEREAS, The Board of Supervisors Resolution authorized the City to accept all rights and obligations of the SFRA relating to its affordable housing assets, including the long term affordability covenants restricting the sale, rental, or use of those housing assets for the benefit of low and moderate income households; and,
- WHEREAS, This Oversight Board has acknowledged, by Resolution No. 3-2012 (March 6, 2012), the transfer of affordable housing assets to the Mayor's Office of Housing, as the successor housing agency to the former SFRA, and acknowledged the role of the Oversight Board in reviewing and approving the use of property tax revenues (former increment) that are necessary to comply with enforceable obligations related to affordable housing development; and,

WHEREAS, On March 1, 2012, the successor agency staff had prepared, as required under Section 34177 (I)(2)(A) of the Health and Safety Code, a draft ROPS that included, among other things, the low-moderate income housing set-aside as a continuing obligation for certain project areas, but now proposes to remove those items from the initial ROPS in light of the Department of Finance guidance recently posted on its website under Housing Frequently Asked Questions at http://www.dof.ca.gov/assembly_bills_26-27/view.php; and,

WHEREAS, On March 6, 2012, this Oversight Board, by Resolution 2-2012, acknowledged that existing and future CFD special tax revenues and their expenditure for former redevelopment areas shall not be included in the ROPS and not be subject to review or approval under AB 26 by this Oversight Board or to the review or disapproval of the Department of Finance or State Controller, and that the City, as successor agency to the SFRA, shall administer such funds, provided that this Oversight Board shall have a role under AB 26 in reviewing and approving the use of any property tax revenues (former increment) used to pay CFD indebtedness. The Department of Finance did not object within the review period under Section 34179 (h) of the Health and Safety Code; and,

WHEREAS, The Initial ROPS lists various affordable housing obligations that qualify as an "enforceable obligation" as described above and in AB 26, including legally binding and enforceable agreements; obligations imposed by state law; amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund, provided the repayment schedule is approved by the Oversight Board; and obligations imposed by bond covenants (Cal. Health & Safety Code §34171(d)(1)); and,

WHEREAS, A narrative describing the Long Term Affordable Housing Enforceable Obligations is attached to this resolution as Exhibit C, and fully incorporated in this resolution (the "Housing Obligations Summary"); and,

WHEREAS, As described in the Housing Obligations Summary, the City's assumption of the former SFRA's enforceable obligations require the City to, among other things: (1) develop approximately 1140 affordable housing units in the Candlestick Point-Hunters Point Shipyard Phase 2 Project as part of a Disposition and Development Agreement ("DDA") that is a legally binding and enforceable contract between SFRA and CP Development Co., LP executed in 2010 and that has a separate pledge of property tax revenue (formerly increment) to cover costs associated with the affordable housing development; (2) develop approximately 1445 affordable housing units in Mission Bay South and Mission Bay North (of which 674 units have been constructed) as part of Owner Participation Agreements that are legally binding and enforceable contracts between SFRA and FOCIL-MB, LLC executed in 1998 and that have separate pledges of property tax revenue (formerly increment) to cover costs associated with the affordable housing development; (3) develop approximately 218 affordable housing units in the Hunters Point Shipyard Phase 1 Project as part of a Disposition and Development Agreement ("DDA") that is a legally binding and enforceable contract between SFRA and HPS Developer executed in 2003; (4) develop thirty-five percent (35%) of all housing units in the Transbay Project Area as affordable housing units (estimated in the Report on the Redevelopment Plan

to be 1183 affordable units) as an obligation that is imposed by state law under Section 5027.1 California Public Resources Code and that is required under the Transbay Redevelopment Project Implementation Agreement, a legally binding and enforceable contract between SFRA and the Transbay Joint Powers Authority executed in 2006; and (5) develop approximately 6700 affordable housing units (of which 900 units have been constructed) to replace affordable housing units that the SFRA previously destroyed and did not replace as part of an obligation imposed by state law under Sections 33413 (a), 33333.8 and 33333.7 of the California Health and Safety Codes; and,

WHEREAS, All of the property tax revenues (formerly increment) necessary to fulfill the activities described in the Housing Obligations Summary are amounts owed to the Low and Moderate Income Housing Fund of the SFRA and deferred as of the effective date of AB 26 (June 29, 2011) and therefore subject to approval of the Oversight Board; and,

WHEREAS, The City Controller and successor agency staff, in coordination with the City Attorney's Office, have reviewed the Initial ROPS and all appropriate supporting documentation to validate that the items listed in the Initial ROPS constitute enforceable obligations and Exhibit A meets the requirements for a valid ROPS under AB 26; and,

WHEREAS, Having determined the validity of the Initial ROPS, subject to its certification by an external auditor, the successor agency staff and the City Controller, having consulted with the City Attorney's Office, recommend that the Oversight Board approve the Initial ROPS and authorize its submission to the State Controller and Department of Finance in accordance with the Department of Finance's letter of March 2, 2012; now, therefore, be it

RESOLVED, That this Oversight Board approves the Initial ROPS, including the line items for the Major Approved Development Projects and the Long Term Affordable Housing Enforceable Obligations, for the period January 1, 2012 to June 30, 2012 inclusive, and directs the Executive Director or her designee to submit the ROPS to the City Controller, Department of Finance, and State Controller, post the Initial ROPS on the internet website of the City as successor agency, and to take any other actions necessary or appropriate to comply with AB 26's requirements relating to the ROPS; and, be it, further

RESOLVED, That this Oversight Board has reviewed the Major Approved Development Project Summaries, confirms and approves the enforceable obligations of the City as described therein, accepts and agrees to exercise the authority that the City has delegated to this Oversight Board with respect to the Major Approved Development Projects as described in the Board of Supervisors Resolution, and authorizes City staff to take such actions as may be necessary or appropriate in furtherance of the enforceable obligations consistent with this resolution and the Board of Supervisors Resolution (and subject to any future required approvals of this Oversight Board and the Board of Supervisors consistent with the delegations contained in the Board of Supervisors Resolution); and, be it, further

RESOLVED, That this Oversight Board has reviewed the Housing Obligations Summary, confirms and approves the enforceable obligations of the City as described therein and authorizes City staff to take such actions as may be necessary or appropriate in furtherance of the enforceable obligations consistent with this resolution and the Board of Supervisors Resolution (and subject to any future required approvals of this Oversight Board and the Board of Supervisors consistent with the delegations contained in the Board of Supervisors Resolution); and, be it, further

RESOLVED, That this Oversight Board authorizes City officials to take such actions as may be necessary or appropriate, in consultation with the City Attorney, to effectuate the purpose and intent of this resolution and to comply with AB 26, and ratifies and confirms any prior actions taken by City officials consistent with this resolution.

I hereby certify that the foregoing resolution was adopted by the Oversight Board at its meeting of April 10, 2012

Natasha Jones

Board Secretary

Attachments:

Exhibit A: Initial ROPS

- A-1: Non-Housing (including Administrative Expenses)
- A-2: Housing
- A-3: Bonds
- A-4: Pass-Through Payments
- A-5: Unspent Bond Proceeds – Non-Housing
- A-6: Unspent Bond Proceeds – Housing

Exhibit B: Major Approved Development Projects Summaries

- B-1: Mission Bay
- B-2: Transbay
- B-3: Hunters Point Shipyard/Candlestick Point

Exhibit C: Housing Obligations Summary