

Orange Countywide Oversight Board

Agenda Item No. 7a

Date: 1/16/2024

From: Staff to the Oversight Board

Subject: A Resolution of the Orange Countywide Oversight Board Recognizing the Re-Establishment of a Loan Between the City of Huntington Beach and the Former Huntington Beach Redevelopment Agency as Successor Agency Enforceable Obligation and Requesting Direction from the State Department of Finance Regarding Application of Health and Safety Code Section 34179.4(b)(3)

Recommended Action: Adopt Resolution No. 24-006 to: (i) recognize a loan owed to the City of Huntington Beach as the enforceable obligation of the Successor Agency to the Huntington Beach Redevelopment Agency, and (ii) request direction from the State Department of Finance regarding the calculation of the outstanding loan amount under Health and Safety Code Section 34179.4(b)(3)

Background

At the Oversight Board's September 19, 2023 meeting, the Successor Agency to the Huntington Beach Redevelopment Agency ("**Successor Agency**") requested approval for an amendment to its Recognized Obligation Payment Schedule ("**ROPS**") for fiscal year 2023-24 ("**ROPS 23-24**"), to add a \$10 million payment for a loan ("**Waterfront Loan**") owing to the City of Huntington Beach ("**City**"). Successor Agency staff was unable to provide information in response to the Oversight Board's questions about the basis of the calculation for the requested amount. Consequently, the Oversight Board did not approve the request at that meeting.

To successfully amend ROPS 23-24, the Successor Agency needed to submit an Oversight Board-approved amendment to the DOF by October 1, 2023 and obtain the DOF's subsequent concurrence. The Successor Agency could not meet the deadline to submit the amendment to the DOF.

The Successor Agency has now submitted its ROPS for fiscal year 2024-25 ("**ROPS 24-25**"). The Oversight Board will consider approval of ROPS 24-25 under a separate resolution ("**ROPS 24-25 Resolution**"). One of the line items on ROPS 24-25 is the repayment for the Waterfront Loan.

Since September 19, 2023, the Successor Agency has submitted additional information to the Oversight Board. The Oversight Board's staff has also reviewed the writs issued by the Superior Court in Sacramento County in *City of Huntington Beach v State of California* (Case No. 34-2018-8002876) ("**Lawsuit**"). At the conclusion of the Lawsuit, the Court has, among other things, directed the DOF to recognize the Waterfront Loan as an enforceable obligation. However, the Court's direction does not speak to the outstanding amount of the Waterfront Loan.

Discussion

The Waterfront Loan was incurred by the former Huntington Beach Redevelopment Agency (“**Former Agency**”) in 1988. The Court found that the Waterfront Loan is an enforceable obligation of the Successor Agency under Health and Safety Code (“**HSC**”) Section 34191.4(b). Thus, the Successor Agency can include repayment for the Waterfront Loan on its ROPS.

After the Oversight Board’s September 19, 2023 meeting, the Successor Agency provided a schedule (“**Schedule**”), showing the Successor Agency’s calculation of the outstanding Waterfront Loan amount. A copy of the Schedule is attached in **Exhibit A**. The Schedule shows that the original loan amount was \$22.4 million. Between 1990 and 2011, the Former Agency made repayments to the City each year, ranging from \$6,672 to \$2,844,731, totaling \$14,783,998.

According to the Schedule (and the Successor Agency’s staff report related to the prior request to amend ROPS 2023-24), the Successor Agency is calculating the outstanding Waterfront Loan amount by allocating all past repayments to the interest portion. Pursuant to such calculation, the Successor Agency maintains that the principal amount of the Waterfront Loan remained at \$22.4 million. It claims that, as of June 20, 2023, the unpaid interest totaled approximately \$8 million, bringing the total owed to the City to approximately \$30.4 million.

HSC Section 34191.4(b)(3) states, in part:

“If the oversight board finds that the loan is an enforceable obligation, any interest on the remaining principal amount of the loan that was previously unpaid after the original effective date of the loan shall be recalculated from the date of origination of the loan as approved by the redevelopment agency on a quarterly basis, at a simple interest rate of 3 percent....*Moneys repaid shall be applied first to the principal, and second to the interest.*” (Italics added).

In response to Oversight Board staff’s inquiry, the Successor Agency staff explained that, per the Successor Agency’s understanding of HSC Section 34191.4(b)(3), only future Successor Agency repayments for the Waterfront Loan (and not past Former Agency repayments) should be applied to principal first before interest.

Successor Agency staff has asserted that this interpretation of HSC Section 34191.4(b)(3) is consistent with past DOF practice. With deference to the DOF as the State administrative agency for the Redevelopment Dissolution Act, and the records that DOF presumably has gathered during the multi-year Lawsuit, the attached Resolution serves as a request to the DOF for guidance. The Oversight Board will ask the DOF for direction on the calculation of the outstanding amount of the Waterfront Loan, and whether the DOF concurs with the Successor Agency’s reading of HSC Section 34191.4(b)(3). The ROPS 24-25 Resolution proposed by Oversight Board staff includes a caveat that the Oversight Board’s approval of Successor Agency’s ROPS 24-25 is subject to any direction that the DOF will give pursuant to this Resolution No. 24-006.

Changes Proposed by Huntington Beach City Attorney

Oversight Board counsel has shared a draft of the resolution with Mr. Michael Gates, Huntington Beach City Attorney (who is also the Successor Agency's General Counsel). Mr. Michael Gates has proposed certain changes to the resolution. Attached in Exhibit B is Mr. Gate's email. The Oversight Board has the discretion to decide whether to accept Mr. Gates's proposed changes.

Impact on Taxing Entities

Semi-annually, the County Auditor-Controller disburses moneys from the Redevelopment Property Tax Trust Fund ("RPTTF") for purposes required by the Dissolution Act, including to the Successor Agency for enforceable obligations approved on a ROPS. Residuals after such disbursements are distributed to the taxing entities. The inclusion of the Waterfront Loan repayment on an approved ROPS will lower the amount of the RPTTF residuals. The amount of Waterfront Loan repayment each fiscal year is subject to a cap pursuant to a formula under HSC Section 34191.4(b)(3)(A). The RPTTF residual for any semester will not be reduced to zero on the account of the inclusion of the Waterfront Loan repayment.

Attachment:

Exhibit A: Schedule from Huntington Beach Successor Agency showing its calculation of the outstanding amount of the Waterfront Loan

Exhibit B: Email from Huntington Beach City Attorney about proposed changes to resolution

Proposed Resolution No. 24-006

EXHIBIT A
Schedule Showing Huntington Beach's
Calculation of Waterfront Loan Outstanding Amount
(provided by Successor Agency on 10/5/2023)

Waterfront Loan Repayment

	Principal	Principal Payments	Principal Balance	Annual Interest (3%)	Cumulative Interest	Interest Payments	Interest Balance	Outstanding Balance
1989	22,400,000		22,400,000					
1990	22,400,000		22,400,000	672,000	672,000	(6,672)	665,328	23,065,328
1991	22,400,000		22,400,000	672,000	1,337,328	(11,407)	1,325,921	23,725,921
1992	22,400,000		22,400,000	672,000	1,997,921	(1,997,921)	0	22,400,000
1993	22,400,000		22,400,000	672,000	672,000	(181,678)	490,322	22,890,322
1994	22,400,000		22,400,000	672,000	1,162,322	(608,831)	553,491	22,953,491
1995	22,400,000		22,400,000	672,000	1,225,491	(257,412)	968,078	23,368,078
1996	22,400,000		22,400,000	672,000	1,640,078	(1,640,078)	0	22,400,000
1997	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
1998	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
1999	22,400,000		22,400,000	672,000	672,000	(73,282)	598,718	22,998,718
2000	22,400,000		22,400,000	672,000	1,270,718	(100,212)	1,170,505	23,570,505
2001	22,400,000		22,400,000	672,000	1,842,505	(93,562)	1,748,943	24,148,943
2002	22,400,000		22,400,000	672,000	2,420,943	(248,212)	2,172,731	24,572,731
2003	22,400,000		22,400,000	672,000	2,844,731	(2,844,731)	0	22,400,000
2004	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2005	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2006	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2007	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2008	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2009	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2010	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2011	22,400,000		22,400,000	672,000	672,000	(672,000)	0	22,400,000
2012	22,400,000		22,400,000	672,000	672,000		672,000	23,072,000
2013	22,400,000		22,400,000	672,000	1,344,000		1,344,000	23,744,000
2014	22,400,000		22,400,000	672,000	2,016,000		2,016,000	24,416,000
2015	22,400,000		22,400,000	672,000	2,688,000		2,688,000	25,088,000
2016	22,400,000		22,400,000	672,000	3,360,000		3,360,000	25,760,000
2017	22,400,000		22,400,000	672,000	4,032,000		4,032,000	26,432,000
2018	22,400,000		22,400,000	672,000	4,704,000		4,704,000	27,104,000
2019	22,400,000		22,400,000	672,000	5,376,000		5,376,000	27,776,000
2020	22,400,000		22,400,000	672,000	6,048,000		6,048,000	28,448,000
2021	22,400,000		22,400,000	672,000	6,720,000		6,720,000	29,120,000
2022	22,400,000		22,400,000	672,000	7,392,000		7,392,000	29,792,000
2023	22,400,000		22,400,000	672,000	8,064,000		8,064,000	30,464,000
					Cumulative Interest Payments	(14,784,000)		

EXHIBIT B

Email from Huntington Beach City Attorney About Proposed Changes to Resolution

From: Gates, Michael
Sent: Thursday, January 4, 2024 1:58 PM
To: Kit Bobko <pbobko@ringbenderlaw.com>
Subject: RE: Countywide Oversight Board - Huntington Beach ROPS

For instance, here is current Reso:

SECTION 2. The Oversight Board hereby recognizes the re-establishment of the Waterfront Loan as the Successor Agency's enforceable obligation.

SECTION 3. The Oversight Board hereby requests direction from the DOF on the calculation of the outstanding amount of the Waterfront Loan, and whether the DOF concurs with the Successor Agency's reading of HSC Section 34191.4(b)(3) that the currently outstanding principal amount of the Waterfront Loan is \$22,400,000 and the total amount owing as of June 30, 2023 is \$30,464,000.

Whereas, in order for Section 3 to be CONSISTENT with what is declared in Section 2, I would think it should say:

SECTION 2. The Oversight Board hereby recognizes the re-establishment of the Waterfront Loan as the Successor Agency's enforceable obligation.

SECTION 3. The Oversight Board hereby confirms the calculation of the outstanding amount of the Waterfront Loan pursuant to HSC Section 34191.4(b)(3) that the currently outstanding principal amount of the Waterfront Loan is \$22,400,000 and the total amount owing as of December 31, 2023 is \$34,000,000.

Here is the Staff Report, and this paragraph it seems by law (according to Oversight needing to perform this function rather than DOF), should be stricken:

Successor Agency staff has asserted that this interpretation of HSC Section 34191.4(b)(3) is consistent with past DOF practice. With deference to the DOF as the State administrative agency for the Redevelopment Dissolution Act, and the records that DOF presumably has gathered during the multi year Lawsuit, the attached Resolution serves as a request to the DOF for guidance. The Oversight Board will ask the DOF for direction on the calculation of the outstanding amount of the Waterfront Loan, and whether the DOF concurs with the Successor Agency's reading of HSC Section 34191.4(b)(3). The ROPS 24-25 Resolution includes a caveat that the Oversight Board's approval of Successor Agency's ROPS 24-25 is subject to any direction that the DOF will give pursuant to this Resolution No. 24-XXX.



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RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD

RESOLUTION NO. 24-006

A RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD
RECOGNIZING THE RE-ESTABLISHMENT OF A LOAN BETWEEN THE CITY OF
HUNTINGTON BEACH AND THE FORMER HUNTINGTON BEACH REDEVELOPMENT
AGENCY AS SUCCESSOR AGENCY ENFORCEABLE OBLIGATION AND REQUESTING
DIRECTION FROM THE STATE DEPARTMENT OF FINANCE REGARDING
APPLICATION OF HEALTH AND SAFETY CODE SECTION 34179.4(b)(3)

WHEREAS, by the laws of the State of California (“**State**”), the Huntington Beach Redevelopment Agency (“**Former Agency**”) and all other redevelopment agencies within the State were dissolved as of February 1, 2012, and successor agencies were established as successor entities to wind down the former redevelopment agencies’ affairs; and

WHEREAS, pursuant to Health and Safety Code (“**HSC**”) Section 34173(d), the City Council of the City of Huntington Beach (the “**City**”) adopted a resolution on January 9, 2012, and elected for the City to become the Successor Agency to the Huntington Beach Redevelopment Agency (“**Successor Agency**”); and

WHEREAS, the Successor Agency is the successor entity to the Former Agency and is tasked with winding down the Former Agency’s affairs in accordance with the provisions of Part 1.85 of Division 24 of the HSC (“**Dissolution Act**”); and

WHEREAS, pursuant to HSC Section 34179, each successor agency is under the jurisdiction of an oversight board; and

WHEREAS, pursuant to HSC Section 34179(j), beginning July 1, 2018, the individual oversight board for each successor agency was dissolved and replaced by a countywide oversight board and, thus, the Orange Countywide Oversight Board (“**Oversight Board**”) was established and has assumed jurisdiction over all successor agencies in the County of Orange, including the Successor Agency; and

WHEREAS, the Successor Agency has informed the Oversight Board about the Sacramento County Superior Court’s judgment in *City of Huntington Beach v State of California* (Case No. 34-2018-8002876) (“**Lawsuit**”); and

WHEREAS, in connection with the Lawsuit, the Court has issued a writ of mandate dated March 15, 2022, and an amended writ of mandate dated February 17, 2023 (together, “**Writ**”); and

WHEREAS, the Lawsuit pertains to multiple loans that the Former Agency owed to the City; and

WHEREAS, under HSC Sections 34171(d)(1) and 34178(a) and other provisions of the Dissolution Act, agreements (including loan agreements) between the City and the Former Agency

are no longer invalid or binding on the Successor Agency, and are not “enforceable obligations” of the Successor Agency, except in limited cases permitted by the Dissolution Act; and

WHEREAS, with respect to an invalidated City loan agreement, the Successor Agency may seek to re-establish the loan as an enforceable obligation, if certain qualifications set forth in HSC Section 34191.4(b) have been met; and

WHEREAS, according to the Writ, in 2017, the then oversight board of the Successor Agency (“**Prior Oversight Board**”) adopted resolutions to re-establish 12 City loans as enforceable obligations under HSC Section 34191.4(b) and, around the same time, the Successor Agency included these loans on its Recognized Obligation Payment Schedule (“**ROPS**”) to request money for the repayment of these loans; and

WHEREAS, the Prior Oversight Board resolutions and the ROPS requests were subject to review by the State Department of Finance (“**DOF**”); and

WHEREAS, DOF disapproved of those Prior Oversight Board resolutions and loan repayment requests on the ROPS, finding that none of the 12 loans satisfied the requirements of HSC Section 34191.4(b) and, subsequently, the City initiated the Lawsuit; and

WHEREAS, ultimately, the Court found in favor of the DOF with respect to most of the loans, but ruled that that two of the loans – one of which is referred to as the “**Waterfront Loan**” – met the requirements under HSC Section 34191.4(b) to be re-established; and

WHEREAS, the Court directed the DOF to treat the Waterfront Loan as an enforceable obligation, though the Court did not specify the outstanding amount of the enforceable obligation; and

WHEREAS, at the Oversight Board’s September 19, 2023 meeting, the Successor Agency requested approval for an amendment to its ROPS for fiscal year 2023-24 (“**ROPS 23-24**”), to add \$10,000,000 as repayment to the City for the Waterfront Loan; and

WHEREAS, because the Successor Agency staff was unable to provide information in response to the Oversight Board’s questions about the basis of the calculation for the requested amount, the Oversight Board declined to give approval at the September 19, 2023 meeting; and

WHEREAS, for any proposed amendment to ROPS 23-24 to become effective, the Successor Agency was required to submit an Oversight Board-approved amendment to the DOF by October 1, 2023 and obtain the DOF’s subsequent concurrence; and

WHEREAS, the Successor Agency was unable to meet the October 1, 2023 deadline to submit the ROPS 2023-24 amendment to the DOF; and

WHEREAS, since September 19, 2023, the Oversight Board has received additional information provided by the Successor Agency and has further reviewed the Writ; and

WHEREAS, in the Writ, the Court described the background of the Waterfront Loan:

“The Waterfront Loan is memorialized in a written agreement between the City and the Former RDA...This document, executed in 1988, describes the City's sale of real property to the Former RDA for a price of \$22,400,000. The property is located within the ‘Main-Pier Project Area,’ and the transfer was made to facilitate development within this area...The City deeded the property to the Former RDA in 1989....

...[T]he written agreement designates an annual interest rate of 10 percent.

...Financial records that the Successor Agency submitted to the DOF...indicate that between 1990 and 2011, the Former RDA made annual payments on various loan obligations, and that a \$14.78 million ‘pro rata share’ of these payments may be allocated to the Waterfront Loan....”; and

WHEREAS, the Successor Agency has provided a schedule (“**Schedule**”) showing past payments made by the Former Agency, confirming that the Former Agency made repayments to the City, ranging from \$6,672 to \$2,844,731 (totaling \$14,783,998), between 1990 and 2011; and

WHEREAS, in a staff report (“**HB Staff Report**”) relating to the Successor Agency’s prior request to amend ROPS 23-24, the Successor Agency wrote: “The total amount of the loan as of June 30, 2023 is \$30,464,000, comprised of \$22,400,000 in principal amount and \$8,064,000”; and

WHEREAS, according to the HB Staff Report and the Schedule, the Successor Agency is calculating the outstanding amount of the Waterfront Loan by allocating all past repayments to the interest portion and, as such, the principal amount of the Waterfront Loan has remained at \$22,400,000 since fiscal year 1988-89; and

WHEREAS, HSC Section 34191.4(b)(3) states, in part:

“If the oversight board finds that the loan is an enforceable obligation, any interest on the remaining principal amount of the loan that was previously unpaid after the original effective date of the loan shall be recalculated from the date of origination of the loan as approved by the redevelopment agency on a quarterly basis, at a simple interest rate of 3 percent....*Moneys repaid shall be applied first to the principal, and second to the interest*” (italics added); and

WHEREAS, in response to Oversight Board staff’s inquiry, the Successor Agency staff indicated that, per the Successor Agency’s understanding of HSC Section 34191.4(b)(3), only future Successor Agency repayments for the Waterfront Loan (and not past Former Agency repayments) should be applied to principal first and then interest; and

WHEREAS, on the Successor Agency’s proposed ROPS for fiscal year 2024-25, one of the line items is the repayment for the Waterfront Loan – including information about the amount to be repaid during fiscal year 2024-25, as well as the total outstanding amount; and

WHEREAS, the DOF is the State administrative agency with respect to the Dissolution Act and also has records relating to the Waterfront Loan from the Lawsuit; and

WHEREAS, the Oversight Board seeks guidance from the DOF on whether the DOF concurs with the Successor Agency's application of HSC Section 34191.4(b)(3) in its calculation that the currently outstanding principal amount of the Waterfront Loan is \$22,400,000 and the total amount owing as of June 30, 2023 is \$30,464,000;

NOW, THEREFORE, BE IT RESOLVED BY THE ORANGE COUNTYWIDE OVERSIGHT BOARD:

SECTION 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by reference.

SECTION 2. The Oversight Board hereby recognizes the re-establishment of the Waterfront Loan as the Successor Agency's enforceable obligation.

SECTION 3. The Oversight Board hereby requests direction from the DOF on the calculation of the outstanding amount of the Waterfront Loan, and whether the DOF concurs with the Successor Agency's reading of HSC Section 34191.4(b)(3) that the currently outstanding principal amount of the Waterfront Loan is \$22,400,000 and the total amount owing as of June 30, 2023 is \$30,464,000.

SECTION 4. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 5. The Clerk of the Oversight Board shall certify to the adoption of this Resolution and is directed to transmit this Resolution to the DOF.