

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE

MEMORANDUM

TO: OVERSIGHT BOARD	FROM: Richard Doyle, General Counsel
SUBJECT: Transfer of Housing Assets; Item VI (E) March 22, 2012 Oversight Board Meeting	DATE: March 21, 2012

SUPPLEMENTAL MEMORANDUM

REASON FOR SUPPLEMENTAL MEMORANDUM

After completion of the original staff memorandum, there was concern that a full and adequate presentation of the projects listed on the List of Housing Assets to be approved by the Oversight Board could not be accomplished as part of the initial Oversight Board meeting on March 22, 2012. As such, City staff is amending its recommendation to request Oversight Board approval of three (3) specific housing assets that will require action by the City in the next few weeks to keep those projects viable and on schedule. In addition, the resolution regarding the transfer of housing assets and the actions required of the Oversight Board have been amended since the original staff memorandum was completed to take into account concerns raised by several title companies that work with the City on housing projects.

BACKGROUND

In 1988, the Agency and the City entered into a Cooperation Agreement under which the Agency delegated to the City the administration of the Low and Moderate Income Housing Fund ("LMIHF"). Pursuant to the Cooperation Agreement, the City, acting on behalf of the Agency, administered and managed the LMIHF. As such, the City, through its Department of Housing, provided funds from the LMIHF to developers and low income families and individuals. Although the City was acting as the agent of the Agency, the documentation for actions taken by the City during its administration of the LMIHF were done in the name of the City.

Pursuant to AB1X 26, redevelopment agencies in California were dissolved effective February 1, 2012. The legislation, as amended by the California Supreme Court in *California Redevelopment Association v. Matosanto*, also provided that all assets, properties, contracts, leases, books, records, buildings and equipment were transferred to the Successor Agency on February 1, 2012. However, AB 1X 26 provided that the City could elect to retain the housing assets and functions previously performed by the Agency.

On January 24, 2012, the Agency's Board of Directors adopted Resolution No. 6033 and the City Council adopted Resolution No. 76128, providing that upon dissolution of the Agency pursuant to AB 1X 26, the City would assume the former Agency's housing assets, which includes all rights, interest privileges, property (real, personal and intangible), including all loans and grants, all property such as land, buildings and dwelling units held by the Agency in connection with the production and preservation of low and moderate income housing (collectively, the "housing assets"), and all of the rights, duties, and obligations that remain under the California Redevelopment Law ("CRL") with regard to the production and preservation of low and moderate income housing.

The City has existing acquisition loans on three (3) affordable housing projects (Mayfair Court, Rosemary Senior Apartments and Rosemary Family Apartments, which are described more fully below) that are expected to obtain construction financing within the next few weeks. The City will need to take certain actions shortly for these projects to remain viable and on schedule. Each of these loans was listed as a Housing Asset and the staff recommends that the Oversight Board approve and direct the Successor Agency to take such actions as necessary to effectuate the transfer of these assets to the City.

ANALYSIS

The original staff memorandum recommended that the Oversight Board approve a List of Housing Assets over thirty (30) pages long containing, among other things, (i) a substantial number of individual loans to low income individuals under various loan programs, including the Teacher Home Buyer Loan Program and the Rehabilitation Loan Program, (ii) numerous loans to developers for multi-family affordable housing projects and (iii) a number of real property owned assets acquired with funds from the LMIHF. Given the substantial number of items listed as Housing Assets, City staff determined that there would not be sufficient time during this initial Oversight Board meeting to present a full and adequate presentation to the Oversight Board to verify as housing assets the substantial number of assets on the list. Therefore, City staff is recommending that the Oversight Board approve three (3) specific housing projects as housing assets for the reasons described below. It is anticipated that the remaining housing asset list will be brought to the Oversight Board at a later meeting when a more thorough review can occur.

AB1X 26 allows the City to retain the housing functions and assets of the former redevelopment agency, however, the Legislation does not specifically define "housing assets". Given the legal requirement under the CRL that funds deposited in the LMIHF be used solely for affordable housing purposes, the term "housing assets" must, at a minimum, include property and other interests (i.e. notes receivables or affordability restrictions) acquired with funds from the LMIHF. Each of the three (3) projects described herein and the respective promissory notes evidencing the City's interest in such project and constituting the housing asset meets that criteria. The three (3) specific projects are as follows:

1. Mayfair Court Apartments

On September 30, 2008, the San José City Council approved a funding commitment of up to \$7,900,000 from the City's LMIHF (City Fund 443) for a land acquisition/construction/permanent loan for the development of the 93-unit McCreery Courtyards rental project (later renamed Mayfair Court), located on McCreery Avenue south of Alum Rock Avenue. On November 7, 2008, the City executed loan documents providing up to \$6,750,000 for acquisition of the site by San José Pacific Associates, L.P., a California limited partnership ("Mayfair Developer"). This project will offer 46 apartment units that will be affordable to extremely low-income families, 46 units affordable to very low-income families, and one unrestricted manager's unit. The Mayfair Developer purchased the site on November 13, 2008 and the City recorded a Deed of Trust to secure its \$6,750,000 loan. The staff memorandum presented to the City Council on September 30, 2008, documents that funds were committed from City Fund 443. The Mayfair Developer has now secured the necessary funding to construct the project and the City is ready to convert the acquisition loan to a construction/permanent loan. No disbursements to the Mayfair Developer beyond the previously disbursed \$6,750,000 from the LMIHF will be made in connection with this project.

2. Rosemary Family Apartments

On December 16, 2008, the San José City Council approved a funding commitment of up to \$6,300,000 from the City's LMIHF (City Fund 443) for a land acquisition/construction/permanent loan for the development of the Rosemary Family Apartments project located at the southeast corner of Rosemary and North First Street in San Jose. On February 20, 2009, the City executed loan documents, including a promissory note secured by a deed of trust, providing up to \$6,300,000 for acquisition of the site by an affiliate of Roem Development Corporation ("Rosemary Family Developer"). The Family Project involves the construction of 184 one-bedroom, two-bedroom and three-bedroom apartment units. Upon completion of the Family Project, 10% of the units (19 units) will be initially rented to individuals and families with incomes that do not exceed 50% of

the area median income ("AMI"); and 90% of the units (163 units) will be rented to families with incomes that do not exceed 60% of AMI. Two of the Family Project's 184 units will be unrestricted manager's units. The rental restrictions for the Family Project will remain for a period of 55 years and conform to the City's rental affordability requirements. The Rosemary Family Developer subsequently purchased the site and the City recorded a Deed of Trust to secure its \$6,300,000 loan. The staff memorandum presented to the City Council on December 16, 2008, documents that funds were committed from City Fund 443. The Rosemary Family Developer has now secured the necessary funding to construct the project and the City loan will be paid off in full.

3. Rosemary Senior Apartments

On December 16, 2008, the San José City Council approved a funding commitment of up to \$3,700,000 from the City's LMIHF (City Fund 443) for a land acquisition/construction/permanent loan for the development of the Rosemary Senior Apartments rental project located at the southeast corner of Rosemary and North First Street in San Jose. On February 20, 2009, the City executed loan documents, including a promissory note secured by a deed of trust, providing up to \$6,300,000 for acquisition of the site by an affiliate of Roem Development Corporation ("Rosemary Senior Developer"). The Senior Project involves the construction of 106 one-bedroom apartment units. Upon completion of the Senior Project, a City Affordability Restriction will be recorded, requiring the rents on 10% of the units (11 units) be restricted to individuals and families with incomes that do not exceed 30% of AMI, the rents on 7% of the units (7 units) be restricted to individuals and families with incomes that do not exceed 45% of AMI, the rents on 12% of the units (13 units) be restricted to individuals and families with incomes that do not exceed 50% of AMI and the rents on 70% of the units (74 units) be restricted to individuals and families with incomes that do not exceed 60% of AMI. One of the Senior Project's 106 units will be an unrestricted manager's unit. The rental restrictions for the Senior Project will remain for a period of 55 years and conform to the City's rental affordability requirements. The Senior Project documents define the term "Senior" to be a person of at least 62 years of age. Eligibility to reside in the Senior Project requires that at least one person in a given household meet this definition. The Rosemary Senior Developer subsequently purchased the site and the City recorded a Deed of Trust to secure its \$6,300,000 loan. The staff memorandum presented to the City Council on December 16, 2008, documents that funds were committed from City Fund 443. The Rosemary Senior Developer has now secured the necessary funding to construct the project and the City is ready to convert the acquisition loan to a construction/permanent loan. No additional disbursements to the Rosemary Senior Developer from the LMIHF will be made in connection with this project.

In addition to limiting the proposed resolution to these three (3) specific projects, the resolution was revised to accommodate the requests of several title

companies who insure the City's housing asset transactions, by providing an action consistent with the duty of the Oversight Board to direct the Successor Agency to effectuate these specific transfers. Although City Staff believes that the election by the City to retain the housing functions and assets of the former Agency was accomplished, effective February 1, 2012, as a result of the City and Agency Resolutions which were enacted on January 24, 2012, since AB X1 26 requires the Oversight Board to direct the Successor Agency to transfer the housing functions and assets to the appropriate entity, the expanded resolution will help ensure that the Oversight Board obligations are met. A copy of the proposed resolution is attached hereto.

Upon approval of this action by the Oversight Board, a resolution will be presented to the Successor Agency on March 27 that will authorize the Successor Agency to confirm, effectuate, and validate the transfer of these housing assets to the City.

For questions please contact Tom Murtha at (408) 535-1200.

RICHARD DOYLE
General Counsel

By 
THOMAS D. MURTHA
Senior Deputy City Attorney

OVERSIGHT BOARD

RESOLUTION NO. _____

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

WHEREAS, by implementation of ABX1 26 , which amended provisions of the California Redevelopment Law, (the "CRL", found at Health and Safety Code Section 33000, *et seq.*) and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, as of February 1, 2012, the Redevelopment Agency of the City of San José was dissolved, the Successor Agency to the Redevelopment Agency of the City of San Jose ("Successor Agency") came in to existence, and the requirement for the appointment of an Oversight Board to the Successor Agency to the Redevelopment Agency of the City of San José ("Oversight Board") became effective; and

WHEREAS, on January 24, 2012, the Agency's Board of Directors approved a resolution No. 6033 (the "Agency Board Resolution"), providing that the City of San José ("the City") elected to retain the responsibility for performing housing functions previously performed by the Agency (the City acting in such capacity is referred to herein as the "Housing Agency") and that upon dissolution of the Agency (a) all assets, properties, contracts, leases, books and records, buildings and equipment, of the Agency would be transferred to the City in its capacity as Successor Agency pursuant to the terms of Health and Safety Code Section 34173 and (b) all housing assets along with all responsibilities, rights, powers, duties and obligations associated therewith of the Agency would be transferred to the City in its capacity of Housing Agency pursuant to the terms of Health and Safety Code Section 34176; and

WHEREAS, upon the Agency's dissolution, and pursuant to the Agency Board Resolution and City Resolution No. 76128, adopted January 24, 2012, the City assumed the former Agency's housing assets, which includes all rights, interest privileges, property (real, personal and intangible), including all loans and grants, all property such as land, buildings and dwelling units held by the Agency in connection with the production and preservation of low and moderate income housing, excluding any funds held in the Agency's Low and Moderate Income Housing Fund (collectively, the "housing assets"), and all of the rights, duties, and obligations that remain under the CRL with regard to the production and preservation of low and moderate income housing; and

WHEREAS, although the City has elected to retain the housing responsibilities and assets pursuant to City Resolution No. 76128; pursuant to Health and Safety Code Section 34181 (c), the Oversight Board is required to direct the Successor Agency to transfer housing responsibilities and assets to the appropriate entity, which as a result of the City's election in City Resolution No. 76128 is the City in its capacity of Housing Agency, and pursuant to Health and Safety Code Section 34177(g), the Successor Agency is required to effectuate such transfer; and

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY that:

1. The Oversight Board hereby determines and finds that the assets set forth in Exhibit A attached hereto are housing assets that must to be transferred to the City in its capacity of Housing Agency, pursuant to Health and Safety Code Section 34176.
2. The Oversight Board hereby acknowledges that, consistent with Health and Safety Code Section 34176 as of February 1, 2012, the housing assets, as set forth on Exhibit A attached hereto, were transferred from the Agency to the City in its capacity of Housing Agency, that, as such, the City accepted the housing assets and

that City may exercise all rights and obligations relating to the housing assets, including, but not limited to, entering into new contracts, amending existing contracts, applying and using proceeds from the housing assets, and disposing of the housing assets, and such actions by the City shall not be subject to review or approval by this Oversight Board under the authority or duties set forth in Health and Safety Codes Sections 34180 and 34181.

3. Pursuant to Health and Safety Section 34181(c), the Oversight Board hereby directs and instructs the City in its capacity of Successor Agency to effectuate the transfer of the housing assets set forth in Exhibit A, along with all responsibilities, rights, powers, duties and obligations associated therewith, to the City in its capacity of Housing Agency, to the extent necessary, pursuant to Health and Safety Code 34177(g).

ADOPTED this ____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

Chair

ATTEST:

DENNIS D. HAWKINS, CMC
Successor Agency Clerk

Exhibit A

List of Housing Assets

Acquisition Loans*

1.	Mayfair Court Apartments	\$6,750,000
2.	Rosemary Family Apartment	\$6,300,000
3.	Rosemary Senior Apartments	\$3,700,000

* These particular housing assets are Acquisition Loans for Affordable Housing which consist of Loan Documents, including a Promissory Note, and Affordability Restrictions