



STAFF REPORT

DATE: JANUARY 17, 2011
TO: AGENCY CHAIR AND BOARD MEMBERS
FROM: ROD FOSTER, EXECUTIVE DIRECTOR
BONNIE JOHNSON, MANAGEMENT SERVICES DIRECTOR
PREPARED BY: DELMAR WILLIAMS, AGENCY COUNSEL
DEAN DERLETH, AGENCY COUNSEL
SUBJECT: ADOPTION OF RESOLUTION APPROVING AND ADOPTING AN AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE PURSUANT TO AB 1X 26

Handwritten signatures in blue ink, including one that appears to be "R. Foster" and another that is less legible.

RECOMMENDED ACTION

It is recommended that the Agency Board adopt Resolution No. 897 approving and adopting an amended "Enforceable Obligation Payment Schedule" pursuant to Assembly Bill 1X 26.

GOAL STATEMENT

The proposed action will allow the Agency to continue to perform existing obligations until the Recognized Obligation Payment Schedule becomes effective.

BACKGROUND

On June 28, 2011, as part of the 2011-2012 State of California budget bill, companion bills Assembly Bill 1X 26 ("AB 26") and Assembly Bill 1X 27 ("AB 27") were enacted, which would dissolve the Agency, unless the City adopts an ordinance to participate in the "Alternative Voluntary Redevelopment Program" established by AB 27 and pay an annual "community remittance" payment to the County of San Bernardino. On July 18, 2011, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, Case No. S194861 ("Legal Action"), challenging the constitutionality of AB 26 and AB 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement of AB 26 and AB 27, pending the Supreme Court's determination of the legality of AB 26 and AB 27. On August 11, 2011, the Supreme Court issued an order in the Legal Action granting a partial stay of AB 26, exclusive of Health and Safety Code Sections 34161 through 34167 (which suspend new redevelopment activity), and a complete stay of AB 27, such that the City and the Agency could not pursue new redevelopment activity under the Alternative Voluntary Redevelopment Program (collectively, "Stay"). On August 17, 2011, the Supreme Court modified the Stay such that the Stay no longer affected Health and Safety Code Sections 34167.5 through 34169.5, in addition to California Health and Safety Code Sections 34161 through 34167, or California Health and Safety Code Sections 34194(b)(2). On December 29, 2011, the Supreme Court issued its final decision in the

Legal Action, upholding AB 26, invalidating AB 27, extending all statutory deadlines under Health and Safety Code Sections 34170 through 34191, and essentially dissolving all redevelopment agencies throughout the State effective February 1, 2012

ISSUES/ANALYSIS

Health and Safety Code Sections 34161 through 34169.5 preclude redevelopment agencies from incurring new indebtedness, transferring assets, acquiring real property, entering into new contracts or modifying existing contracts, or adopting or amending redevelopment plans. Health and Safety Code Section 34169 requires redevelopment agencies to adopt an enforceable obligation payment schedule ("EOPS") providing the amount of payments obligated to be made, by month, for each enforceable obligation, through December, 2011.

The EOPS is required to list all of the "enforceable obligations" of the Agency, including the following: bonds; loans legally required to be repaid pursuant to a payment schedule with mandatory repayment terms; payments required by the federal government, preexisting obligations to the state or obligations imposed by state law; judgments, settlements or binding arbitration decisions that bind the agency; legally binding and enforceable agreements or contracts; and contracts or agreements necessary for the continued administration or operation of the agency, including agreements to purchase or rent office space, equipment and supplies.

The Agency adopted an EOPS on August 23, 2011 by Resolution No. 893.

A successor document to the EOPS, the Recognized Obligation Payment Schedule ("ROPS"), was intended to set forth the enforceable obligations of the Agency and be operative on January 1, 2012, after the expiration of the EOPS under Health and Safety Code Section 34177(l)(3). However, as a result of the Legal Action, the Supreme Court extended the deadline for adoption of the ROPS to May 1, 2012. Health and Safety Code Section 34177(a)(1), enacted by AB 1X 26, provides that, until an ROPS becomes operative, only payments required pursuant to the EOPS shall be made, even after the redevelopment agency is dissolved. Therefore, the Agency is amending the EOPS to cover the time period from January 1, 2012 through April 30, 2012.

Health and Safety Code section 34177(a)(1) also provides that after February 1, 2012, the following enforceable obligations, set forth in Health and Safety Code section 34171(d)(2), shall be excluded from payments made pursuant to the EOPS: any agreements, contracts or arrangements between the City and the Agency. However, Health and Safety Code section 34177(d)(2) provides an exception for the following agreements between the City and the Agency: (1) any written agreements between the City and the Agency entered into prior to December 31, 2010, solely for the purpose of securing or repaying indebtedness obligations to third parties; and (2) loan agreements entered into between the Agency and the City within two years of the date of creation of the Agency.

The attached Agency Resolution adopts an amended EOPS, setting forth the enforceable obligations and the amount of payments to be made for each of them, by month, through April,

2012. This EOPS shall be operative even after the Agency is dissolved on February 1, 2012, and the City, as successor agency to the Agency, shall continue to make payments in accordance with the amended EOPS, until the ROPS is operative. The amended EOPS will be distributed at the meeting.

Pursuant to Health and Safety Code Section 34169, the revised EOPS shall be transmitted to the County auditor-controller, the Controller, and the Department of Finance, and shall be posted on the City's website.

FISCAL IMPACTS

No Agency funds are involved with the adoption of the amended Enforceable Obligation Payment Schedule. The amended Enforceable Obligation Payment Schedule simply lists existing Agency obligations.

ALTERNATIVES

The Agency Board may wish to consider the following alternatives:

1. Provide alternative direction to staff.

ATTACHMENT

- (1) Resolution No. 897

1 a stay of enforcement of AB 1X 26 and AB 1X 27, pending the Supreme Court's determination of
2 the legality of AB 1X 26 and AB 1X 27; and

3 **WHEREAS**, on August 11, 2011, the Supreme Court issued an order in the Legal Action
4 granting a partial stay of AB 1X 26, exclusive of Health and Safety Code Sections 34161 through
5 34169.5 (which suspend new redevelopment activity), and a complete stay of AB 1X 27, such
6 that the City and the Agency cannot currently pursue new redevelopment activity under the
7 Alternative Voluntary Redevelopment Program (collectively, "Stay"); and

8 **WHEREAS**, the Supreme Court modified the Stay on August 17, 2011, such that the
9 Stay no longer affects Health and Safety Code Sections 34167.5 through 34169.5, in addition to
10 California Health and Safety Code Sections 34161 through 34167, or California Health and
11 Safety Code Sections 34194(b)(2); and

12 **WHEREAS**, the Stay no longer affected Health and Safety Code Section 34169 requiring
13 the Agency, among other things, to adopt an Enforceable Obligation Payment Schedule ("EOPS")
14 within 60 days after the effective date of AB 1X 26 (August 27, 2011); and

15 **WHEREAS**, the Stay also did not affect Health and Safety Code Section 34167(h)
16 providing that 60 days after the effective date of AB 1X 26 (August 27, 2011) the Agency shall
17 not pay any obligation not set forth in an adopted EOPS; and

18 **WHEREAS**, because the Agency would have been limited to only making payments on
19 obligations listed in an adopted EOPS after August 27, 2011, the Agency adopted an EOPS by
20 Resolution No. 893 on August 23, 2011; and

21 **WHEREAS**, on December 29, 2011, the Supreme Court issued its final decision in the
22 Legal Action, upholding AB 1X 26, invalidating AB 1X 27, extending all statutory deadlines
23 under Health and Safety Code Sections 34170 through 34191, and essentially dissolving all
24 redevelopment agencies throughout the State effective February 1, 2012; and
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1 **WHEREAS**, Health and Safety Code Section 34177(l)(3) provides that the successor
2 agency to the Agency, after the Agency's dissolution, is to adopt a Recognized Obligation
3 Payment Schedule ("ROPS") succeeding the EOPS prior to January 1, 2012; and

4 **WHEREAS**, the California Supreme Court, in the Legal Action, extended the deadline
5 for adoption of the ROPS to May 1, 2012; and

6 **WHEREAS**, Health and Safety Code Section 34177(a)(1) requires that until a ROPS
7 becomes operative, only payments required pursuant to an EOPS shall be made; and

8 **WHEREAS**, Health and Safety Code Section 34177(a)(1) also provides that, in
9 accordance with Health and Safety Code section 34171(d)(2), any agreements, contracts or
10 arrangements between the City and the Agency shall not constitute payable enforceable
11 obligations after February 1, 2012; and

12 **WHEREAS**, if the EOPS provides any debts or obligations be paid by the Agency to the
13 City pursuant to Health and Safety Code section 34177(a)(1), it may only be included as an
14 enforceable obligation through the month of January, 2011; and

15 **WHEREAS**, the revised EOPS may only include debts or obligations be paid by the
16 Agency to the City pursuant to Health and Safety Code section 34171(d)(2), after February 1,
17 2012, if they are: (1) written agreements between the City and the Agency entered into prior to
18 December 31, 2010, solely for the purpose of securing or repaying indebtedness obligations to
19 third parties; or (2) loan agreements entered into between the Agency and the City within two
20 years of the date of creation of the Agency; and

21 **WHEREAS**, because the previously adopted EOPS is operative only through December
22 31, 2011, it must be revised to be operative from January 1, 2012 through April 30, 2012; and

23 **WHEREAS**, all other legal prerequisites to the adoption of this Resolution have
24 occurred.

1 **NOW, THEREFORE, BE IT RESOLVED** by the Redevelopment Agency for the City
2 of Colton, as follows:

3 **Section 1. Recitals.** The Recitals set forth above are true and correct and are
4 incorporated into this Resolution by this reference.

5 **Section 2. CEQA Compliance.** The amendment of the EOPS through this
6 Resolution does not commit the Agency to any action that may have a significant effect on the
7 environment. As a result, such action does not constitute a project subject to the requirements of
8 the California Environmental Quality Act. The Agency Secretary is authorized and directed to
9 file a Notice of Exemption with the appropriate official of the County of San Bernardino,
10 California, within five (5) days following the date of adoption of this Resolution.

11 **Section 3. Approval of EOPS.** The Agency hereby approves and adopts the
12 amended Enforceable Obligation Payment Schedule, in substantially the form attached to this
13 Resolution as Exhibit A, so that the Agency may continue to meet its enforceable obligations, all
14 as required by Health and Safety Code section 34169. The Agency has been required to act
15 quickly in preparing, approving and adopting the EOPS because of the timing of the Supreme
16 Court's decision in the Legal Action. As a result, the Agency reserves the right to amend the
17 EOPS in the future to make the EOPS more accurate.

18 **Section 4. Posting; Transmittal to Appropriate Agencies.** The Executive Director
19 is hereby authorized and directed to post a copy of the EOPS on the City's website. The
20 Executive Director is further authorized and directed to transmit notice, by mail or electronic
21 means, to the San Bernardino County Auditor-Controller, the State Controller and the State
22 Department of Finance, providing the website location of the posted EOPS and other information
23 as required by AB 1X 26 regarding the Agency's adoption of the revised EOPS.
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REDEVELOPMENT AGENCY FOR THE CITY OF COLTON
SECRETARY'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)ss.
CITY OF COLTON)

I, Eileen Gomez, CMC, Secretary to the Redevelopment Agency for the City of Colton, do hereby certify that the foregoing Resolution of the Redevelopment Agency for the City of Colton approving and adopting an amended Enforceable Obligation Payment Schedule pursuant to AB 1X 26 was duly adopted by the Redevelopment Agency for the City of Colton at a regular meeting of the Redevelopment Agency for the City of Colton, held on the 17th day of January, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dated: _____

Eileen Gomez, CMC
Secretary
Redevelopment Agency for the City of Colton

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EXHIBIT A

ENFORCEABLE OBLIGATION PAYMENT SCHEDULE

[To be distributed at the meeting]