

REPORT/RECOMMENDATION TO THE SAN BERNARDINO COUNTYWIDE OVERSIGHT BOARD AND RECORD OF ACTION

June 11, 2020

FROM

TERI LEDOUX, City Manager, City of San Bernardino Successor Agency

SUBJECT

Resolution approving a settlement agreement for litigation between the Successor Agency to the Redevelopment Agency of the City of San Bernardino and Placo San Bernardino, LLC and approving the Successor Agency to the Redevelopment Agency of the City of San Bernardino's Amended Recognized Obligation Payment Schedule for 2020-2021 to fund settlement.

RECOMMENDATION(S)

Adopt **Resolution No. 2020-32** approving the settlement agreement and the Successor Agency to the Redevelopment Agency of the City of San Bernardino's Amended Recognized Obligation Payment Schedule for 2020-2021.

(Presenter: Michael Huntley, Community and Economic Development Director 384-7272)

BACKGROUND INFORMATION

Pursuant to California Health and Safety Code ("HSC") Section 34177(o)(1)(E), once per Recognized Obligation Payment Schedule ("ROPS") period, and no later than October 1st of each year, a successor agency may submit one amendment to the ROPS, if the San Bernardino Countywide Oversight Board ("CWOB") makes a finding that a revision is necessary for the payment of approved enforceable obligations during the second one-half of the ROPS period, which shall be defined as January 1 to June 30, inclusive. The Successor Agency to the Redevelopment Agency of the City of San Bernardino ("Successor Agency") desires to amend its ROPS for the fiscal year 2020-2021 ("ROPS 20-21") in order to provide funding for the settlement of litigation in which the Successor Agency is a defendant.

On December 16, 2019 (Item No. 6), the CWOB approved the ROPS of the Successor Agency for ROPS 20-21. Item no. 133 of ROPS 20-21 is for the payment of "Judgment or Settlement Obligation Related to the Placo Lawsuit." No dollar amount was approved with respect to item no. 133 because, as explained in the notes of ROPS 20-21, "*EO# 133 would fund any payment as may be due in satisfaction of a judgment or settlement of Los Angeles Superior Court Case Nos. BC465755 and BC468955 involving Placo San Bernardino, LLC, the Successor Agency and related parties. EO# 115 relates to attorney fees for the same litigation but does not include amounts to be paid in satisfaction of a judgment or settlement. At this time EO# 133 is a placeholder. To the extent that an obligation for payment is established by or through the Superior Court, such payment will be specified on a future ROPS or amended ROPS. Further, the date noted in Cell D133 as the agreement or contract date is the date that the action against the Agency was filed; it is not an obligation date. Also, 100% of the matter in dispute arises from pre-dissolution events and transactions.*"

The actions identified in ROPS 20-21 as the "Placo Lawsuit" (*i.e. Redevelopment Agency of the City of San Bernardino v. DMC Investment Holdings, LLC, et al.*, Los Angeles Superior Court

Resolution approving a settlement agreement for litigation between the Successor Agency to the Redevelopment Agency of the City of San Bernardino and Placo San Bernardino, LLC and approving the

Case No. BC465755 and *Placo San Bernardino, LLC v. City of San Bernardino, et al.*, Los Angeles Superior Court Case No. BC468955) were filed on May 11, 2011 and September 7, 2011, prior to the dissolution of redevelopment agencies in California. After dissolution the litigation against the former Redevelopment Agency of the City of San Bernardino ("Former Agency") was automatically transferred, as a matter of law, to the Successor Agency. (HSC 341473(g).) The parties to the Placo Lawsuit have reached a global settlement of that litigation in the form shown in Attachment "B." However, the Successor Agency is not allowed to reallocate the RPTTF revenues differently than how the Successor Agency reported the use of reserve amounts on subsequent approved ROPS. As a result, the Successor Agency cannot pay the settlement amounts because no funds were allocated for line item no. 133 of ROPS 20-21. Therefore, the Successor Agency is requesting approval of the proposed Amended ROPS 20-21 for the period of January 1, 2021 through June 30, 2021 ("Amended ROPS 20-21") to add \$600,000 to Item No. 133 of the ROPS 20-21, previously approved as a placeholder only, to allow the Successor Agency to make the payment required by the settlement agreement.

Approval of Amended ROPS 20-21 would allocate an additional \$600,000 of RPTTF to the Successor Agency in order to resolve the Placo Lawsuit. The Placo Lawsuit must be resolved to complete the Successor Agency's dissolution. Approval of the settlement agreement and the Amended ROPS 20-21 is likely to result in savings as the Successor Agency would no longer incur the significant costs and attorneys' fees expended in defense of itself and Panattoni Development Company, Inc. ("Panattoni"), pursuant to an indemnification agreement entered into between the Former Agency and Panattoni. Given the complexity of the litigation, there is a reasonable likelihood that the attorneys' fees and costs to defend the Placo Lawsuit through trial would meet or exceed \$600,000. ROPS 20-21 includes a line amount in the amount \$547,400 (Item No. 115) for the time period of July 1, 2020 through June 30, 2021 for attorneys' fees and costs to defend the Placo Lawsuit. Additionally, the settlement would eliminate the Successor Agency's potential exposure to a multi-million dollar adverse judgment.¹

The Placo Lawsuit arises from Placo San Bernardino, LLC's ("Placo") former ownership of the Carousel Mall ("Mall") located in the City of San Bernardino. In January 2008, Placo purchased a portion of Mall for \$23.5 million. After acquiring the Mall in January of 2008, Placo refinanced a portion of the purchase through a loan from Center Bank in the amount of \$16.45 million, which refinancing closed on February 13, 2008. The loan Placo obtained from Center Bank was evidenced by a promissory note ("Note") and secured by a Deed of Trust recorded against the Mall.

On January 14, 2010, Panattoni and Center Bank entered into a Mortgage Loan Purchase and Sale Agreement ("PSA"), whereby Panattoni acquired an option to purchase the Note from Center Bank for \$16.45 million. In May 2010, Panattoni assigned its right to purchase the Note to the Former Agency and the Former Agency subsequently bought the Note from Center Bank for \$16.45 million. Placo alleges that the Former Agency's acquisition of the Note was part of ongoing actions undertaken by the City, Agency, and Panattoni to harm the Mall's ongoing business and depress the Mall's value so that it could be more easily acquired for the development of a government center on the site.

Placo's interest in the Mall was foreclosed upon by the Former Agency via trustee's sale on February 14, 2011. The Former Agency bought the Mall at the trustee's sale with a credit bid of \$13.13 million. Placo filed two separate lawsuits against the Former Agency and others prior to

¹ The plaintiff in the Placo Lawsuit, Placo San Bernardino, LLC, has asserted that it was damaged in the amount of \$30,000,000.

Resolution approving a settlement agreement for litigation between the Successor Agency to the Redevelopment Agency of the City of San Bernardino and Placo San Bernardino, LLC and approving the

the trustee's sale. The first lawsuit was filed in December 2010 and dismissed after the Former Agency agreed to postpone the trustee's sale until February 2011. In early February 2011, Placo filed a second lawsuit in federal district court to stop the sale. Placo was unable to stop the trustee's sale and months later dismissed the federal case in order to re-file and consolidate it with a case filed by the Former Agency in the Los Angeles Superior Court.

In May of 2011, the Former Agency instituted the action known as *Redevelopment Agency of the City of San Bernardino v. DMC Investment Holdings, LLC, et al.* ("Agency Action"). The Agency Action seeks to collect the difference between the credit bid and the amount owed on the Note, about \$4.9 million, from DMC Investment Holdings, LLC; Donald Chae; and Min Chae.

In September of 2011, *Placo San Bernardino, LLC. v. City of San Bernardino, et al.* ("Placo Action"), is an action brought by Placo alleging various causes of action against the City of San Bernardino ("City"), Former Agency, and Panattoni. Placo alleges causes of action for Inverse Condemnation, Unlawful Taking of Property in Violation of the Constitutions of the United States and State of California, Breach of Contract, Interference with Prospective Economic Advantage, and Wrongful Foreclosure against the Former Agency all of which causes of action arise from or are related to the Former Agency's foreclosure of Placo's interest in the Mall.

The Agency Action and Placo Action were consolidated in the Los Angeles Superior Court. After the City filed bankruptcy in August 2012, the Superior Court stayed the entire matter. Placo then filed a claim in the City's bankruptcy proceeding. On November 5, 2019, the Bankruptcy Court heard the City's Objection to Placo's claim filed in the bankruptcy. After hearing the City's Objection to Placo's Claim, the Bankruptcy Court exercised its supplemental jurisdiction to hear and decide not only Placo's bankruptcy claim but also the Agency Action and Placo Action. The Bankruptcy Court's order effectively lifted the stay allowing the litigation to proceed. Rather than immediately proceeding with active and contentious litigation, the parties engaged in settlement discussions that ultimately resulted in the proposed settlement agreement before the CWOB today.

It is recommended that the CWOB approve the proposed settlement agreement and the Amended ROPS 20-21 to fund the settlement payment required to be made by the Successor Agency.

ATTACHMENTS

- Attachment A – Resolution
- Attachment B – Settlement Agreement
- Attachment C – Amended ROPS 20-21

REVIEW BY OTHERS

This item has been reviewed by the San Bernardino County Auditor-Controller/Treasurer/Tax Collector on June 02, 2020 and San Bernardino Countywide Oversight Board Legal Counsel on May 29, 2020.

**Resolution approving a settlement agreement for litigation between the
Successor Agency to the Redevelopment Agency of the City of San
Bernardino and Placo San Bernardino,LLC and approving the**

Record of Action of the San Bernardino Countywide Oversight Board

APPROVED

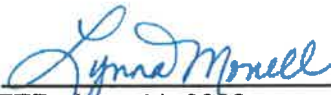
Moved: David Wert Seconded: Cindy Saks

Ayes: Richard DeNava, Kenneth Miller, Cindy Saks, Lawrence Strong, Acquanetta Warren,
David Wert

Absent: Mario Vasquez

Lynna Monell, CLERK OF THE BOARD

BY



DATED: June 11, 2020



cc: File - San Bernardino Countywide Oversight Board w/reso and
attach

KS 06/16/2020