

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 4 – 2016  
Adopted January 19, 2016

**DELEGATING TO THE EXECUTIVE DIRECTOR OF THE SUCCESSOR AGENCY  
THE AUTHORITY TO SETTLE CLAIMS IN AN AMOUNT NOT GREATER THAN  
\$50,000.00**

WHEREAS, In 2002, the Redevelopment Agency of the City and County of San Francisco (“Former Agency”) adopted, by Resolution No. 82-2009 (Aug. 13, 2002), an amendment to the Purchasing Policy that delegated to the Executive Director the authority to approve personal and professional services contracts that do not exceed \$50,000.00; and,

WHEREAS, The Purchasing Policy and its delegation of expenditure authority became the policy of the Office of Community Investment and Infrastructure, as the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, (“OCII” or “Successor Agency”) when the state dissolved redevelopment agencies in 2012. This delegation of authority remains in effect and allows the Successor Agency to enter expeditiously into small contracts of \$50,000.00 or less without approval of the Successor Agency Commission, but still subject to other requirements under the Purchasing Policy and the state law dissolving redevelopment agencies (the “Redevelopment Dissolution Law”); and,

WHEREAS, OCII is occasionally involved in disputes where it asserts or defends claims that could result in protracted and unnecessary litigation if they are not resolved through settlement, which is typically finalized through a contract requiring a payment, if appropriate, and the release of claims; and,

WHEREAS, The Former Agency was one of several plaintiffs that opted out of a class action lawsuit, *In re Municipal Derivatives Antitrust Litigation*, MDL No. 1950, alleging price-fixing in the sale of municipal derivatives (United States District Court for the Southern District of New York) and filed, several years prior to dissolution, its own individual suit based on its purchase of derivatives from some of the defendants in the Municipal Derivatives Litigation (*Redevelopment Agency of the City and County of San Francisco v. Bank of America, et al.*, Master Docket No. 08-2516, also part of MDL No. 1950) (the “OCII MDL Case”). The law firm of Cotchett, Pitre and McCarthy LLP represented the Former Agency, and continues to represent the Successor Agency, in the OCII MDL Case on a contingency fee basis; and,

WHEREAS, Under the Redevelopment Dissolution Law, all litigation involving a redevelopment agency automatically transferred to the successor agency. Cal. Health & Safety Code § 34173 (g). In addition, state law requires successor agencies to perform obligations required pursuant to any enforceable obligations of the former redevelopment agency, Cal. Health & Safety Code § 34177 (c), and to enforce all former redevelopment agency rights for the benefit of the taxing entities. Cal. Health & Safety Code § 34177 (f). State law also authorizes successor agencies to create new enforceable obligations, such as settlement

agreements, to the extent that those new obligations are in compliance with an enforceable obligation. Cal Health & Safety Code § 34177.3 (a); and,

WHEREAS, The Successor Agency, with Oversight Board approval, has approved four proposed settlements with the following defendants in the OCII MDL Case requiring payment to the Successor Agency: Bank of America (\$27,617.48 ), Morgan Stanley ( \$10,036.36 ) , Wells Fargo (\$26,666.25), and JPMorgan Chase & Co. (\$12,470) (each to be paid after pro rata reductions were made for the out of costs incurred by outside counsel prior to the date of those settlement); and,

WHEREAS, The Successor Agency recently approved, by Resolution Nos. 2015-84, 2015-85, 2015-86, and 2015-87, four other settlements in the OCII MDL Case and requested that the Oversight Board approve them. If finally approved, the settlements will require the payment to the Successor Agency of \$16,425 from Société Générale, \$4,106.00 from Bayern LB, \$2,156.00 from National Westminster Bank PLC, and \$770.00 from George K. Baum; and,

WHEREAS, The Successor Agency anticipates future settlements of similar or lesser amounts to be proposed to the agency and its co-plaintiffs by other defendants in the OCII MDL Case; and,

WHEREAS, The MDL defendants sometimes condition settlement offers on prompt acceptance and allowing the Successor Agency's Executive Director, after consultation with the Successor Agency General Counsel, to accept small settlements that do not exceed \$50,000.00 from a MDL defendant and that meet other criteria described in this Resolution without having to obtain further approval from the Successor Agency Commission or the Oversight Board would be advantageous and administratively efficient; and,

WHEREAS, In the interest of administrative efficiency and consistent with the Redevelopment Dissolution Law, the Executive Director should also have the authority to take advantage of reasonable settlement offers and approve settlements for claims, other than those in the OCII MDL Case, for amounts not greater than \$50,000.00, to the extent that the settlement complies with an enforceable obligation; and,

WHEREAS, The City and County of San Francisco ("City") generally authorizes the heads of City departments to approve the settlement of claims where the amount of the settlement does not exceed \$25,000.00 (S.F. Administrative Code §§ 10.22-2 & 10.24), but also authorizes certain departments and directors to settle claims at a higher amount without approval of the Board of Supervisors. See S.F. Administrative Code § 10.25-12 (authorizing the City's Human Resources Director to settle labor grievances in amounts not to exceed \$50,000.00); S.F. Administrative Code §§ 10.25-10 & 10.25-11 (authorizing the Airport Commission to settle claims in amounts not to exceed \$100,000.00); and,

WHEREAS, The Successor Agency is a public agency separate from the City and thus is not governed by the above-referenced sections of the Administrative Code, but would achieve greater administrative efficiency and convenience by delegating to its Executive Director the authority to settle certain claims; and,

WHEREAS, In accepting any settlements under the authority of this Resolution, the Executive Director will determine, in consultation with the Agency General Counsel, that: (1) the cost of pursuing a larger settlement amount would exceed the amount of the settlement; (2) the settlement complies with an enforceable obligation, as

defined in Cal. Health & Safety Code § 34171 (d) (1) and is in the best interest of the taxing entities; and (3) the settlement is reasonable under the facts and circumstances; now, therefore, be it

RESOLVED, That the Successor Agency Commission hereby delegates to the Executive Director of the Successor Agency the authority to approve the settlement of litigated or un-litigated claims where the settlement amount is not greater than \$50,000.00, if the Executive Director determines, after consultation with the Agency General Counsel, that: (1) the cost of pursuing a larger settlement amount would exceed the amount of the settlement; (2) the settlement complies with an enforceable obligation and is in the best interest of the taxing entities; and (3) the settlement is reasonable under the facts and circumstances; and, be it further

RESOLVED, That the Successor Agency shall submit the proposed delegation of authority described in this Resolution to the Oversight Board of the City and County of San Francisco for its review and approval; and, be it further

RESOLVED, That the Executive Director shall submit, on a quarterly basis, to the Successor Agency Commission a written report identifying each such settlement approved, including the plaintiff or defendant involved and the amount of the settlement.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of January 19, 2016.



Commission Secretary