RESOLUTION NO. SA-13-26

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH FRASER & ASSOCIATES FOR FISCAL CONSULTANT SERVICES RELATING TO THE POTENTIAL REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS

WHEREAS, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and the California Health and Safety Code ("HSC"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the HSC; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 ("Successor Agency"); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the "Imperial Beach Redevelopment Agency Successor Agency," the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 was to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies, including without limitation refunding or refinancing bonds or other indebtedness; and

WHEREAS, HSC Section 34179 of AB 26 as amended by AB 1484 (collectively the "Dissolution Act") establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the "oversight board." The oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to HSC Section 34179 of the Dissolution Act. The duties and responsibilities of the Oversight Board are primarily set forth in HSC Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, pursuant to HSC Section 34179.7 of the Dissolution Act, the California Department of Finance ("DOF") has issued a Finding of Completion to the Successor Agency; and

WHEREAS, on December 11, 2003, the former Redevelopment Agency and the Imperial Beach Public Financing Authority (the "Financing Authority"), a Joint Powers Authority of the City of Imperial Beach (the "City") and the former Redevelopment Agency, issued Tax Allocation Revenue Bonds, Series 2003A (the "Series 2003A TABs") secured by the former Redevelopment Agency's tax increment revenues as funding for the debt service obligations. The Series 2003A TABs were issued in order to finance redevelopment activities relating to improvements within the Original and Amended Redevelopment Project Areas ("Project Areas") including street improvements, public park capital improvements, construction of community facilities, and landscaping improvements, among others; and

WHEREAS, debt service on the Series 2003A TABs has been and is repaid solely with tax increment revenues generated within the Project Areas. As of June 1, 2013, the Series 2003A TABs are outstanding in the amount of $17,965,000, with annual principal maturities ranging from June 1, 2014 through June 1, 2033. These principal bond maturities can be prepaid on December 1, 2013, and on any subsequent date thereafter, without a prepayment penalty. The Series 2003A TABs have interest rates ranging from 5.00% to 6.00%; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency may cause the refinancing or refunding of the Series 2003A TABs for debt service savings by issuing, or causing the issuance, of Property Tax Revenue Refunding Bonds (the "Refunding Bonds") in accordance with the Dissolution Act including, without limitation, HSC Sections 34177.5 and 34180(b); and

WHEREAS, based on interest rates in the current market, refunding the Series 2003A TABs is projected to achieve annual debt service savings for the Successor Agency; and

WHEREAS, the Successor Agency desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refinancing/refunding the Series 2003A TABs at a comparatively lower interest rate than the current bond issue's average bond coupon rate and as low of a cost of issuance as possible; and

WHEREAS, on June 12, 2013, the Oversight Board approved Resolution No. OB-13-18 directing the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs for debt service savings and authorizing the Successor Agency to recover its costs therefor. The DOF has requested review of this action; and

WHEREAS, in order to effectuate the refunding of the Series 2003A TABs, the Successor Agency desires to retain the services of Fraser & Associates for debt fiscal consultant services, including without limitation the following, to prepare a report on the economic feasibility of the Project Areas providing the security of the debt issue; and

WHEREAS, the Successor Agency staff has authorized the preparation of a Professional Services Agreement (the "Agreement") to retain the services of Fraser & Associates as a "Fiscal Consultant" to the Successor Agency and recommends the Successor Agency's approval relating to same; and

WHEREAS, pursuant to the Agreement, and subject to the below, Fraser & Associates shall be compensated for work completed, not to exceed $25,500 for basic services rendered under the Agreement and all accrued expenses. According to the Agreement, if the Refunding Bonds are issued, payment to Fraser & Associates for compensation and accrued expenses not to exceed $25,500 will be made by the Successor Agency through the Refunding Bonds Trustee/Escrow Agent and from the proceeds of the Refunding Bonds within thirty (30) calendar days of receipt of the invoice. However, in the unlikely event that the Refunding Bonds are not issued, payment to Fraser & Associates for compensation and accrued expenses not to exceed $25,500 is not contingent on the closing and bond issuance and will be made by the Successor Agency from available funds within thirty (30) calendar days of receipt of the invoice; and

WHEREAS, the non-contingent compensation payable to Fraser & Associates in the amount not to exceed $25,500 pursuant to the Agreement is $10,500 above the $15,000 threshold requirement to perform a formal competitive bid process for the procurement of professional services. Imperial Beach Municipal Code ("Municipal Code") Section 3.04.160(G) states that the City Council may waive the formal bid requirements for the procurement of professional services by resolution when it is necessary or convenient for the management of the City's affairs. (Ord. 2009-1084 § 2). Due to the unique nature of the services rendered and complexity of the proposed refinancing transaction, staff recommends that the Successor Agency waive any applicable formal bid requirements for the selection of Fraser & Associates and to approve the Agreement and authorize the Executive Director to enter into the Agreement consistent with the authority provided to the City Council by Municipal Code Section 3.04.160(G); and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. Consistent with the authority provided to the City Council of the City pursuant to Municipal Code Section 3.04.160(G), the Successor Agency hereby waives any applicable formal bid requirements for the selection of Fraser & Associates based on the unique nature of the services to be rendered and the complexity of the proposed refinancing transaction and due to the necessity and convenience for the management of the Successor Agency's affairs in this matter.

Section 3. The Successor Agency hereby approves the Professional Services Agreement ("Agreement") with Fraser & Associates in substantial form as the Agreement attached as Exhibit "A", for bond fiscal consultant services for a total amount (i) not to exceed $25,500 if the Refunding Bonds are issued, payment to Fraser & Associates will be made by the Successor Agency through the Refunding Bonds Trustee/Escrow Agent and from the proceeds of the Refunding Bonds; or (ii) not to exceed $25,500 if the Refunding Bonds are not issued, payment to Fraser & Associates will be

made by the Successor Agency from available funds including Redevelopment Property Tax Trust Fund distributions pursuant to an approved Recognized Obligation Payment Schedule.

Section 4. The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to execute the Agreement in substantial form as the Agreement attached as Exhibit "A", subject to the Oversight Board's approval of the Agreement as required by the Dissolution Act or desired by the Executive Director.

Section 5. The Executive Director, or designee, of the Successor Agency is hereby authorized to make non-substantive changes and amendments to the Agreement deemed necessary and as approved by the Executive Director of the Successor Agency and its legal counsel and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.

Section 6. The Successor Agency determines that the activity approved by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.

Section 7. 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 Successor Agency declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 8. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 28th day of June 2013, by the following vote:

AYES:	**BOARDMEMBERS:**	**SPRIGGS, BILBRAY, PATTON, BRAGG, JANNEY**
NOES:	**BOARDMEMBERS:**	**NONE**
ABSENT:	**BOARDMEMBERS:**	**NONE**

JAMES C. JANNEY, CHAIRMAN

ATTEST:

Jacqueline M. Hald

JACQUELINE M. HALD, MMC
SECRETARY

Resolution SA-13-26
EXHIBIT "A"
Imperial Beach Redevelopment Agency Successor Agency
AGREEMENT FOR PROFESSIONAL SERVICES

FOR FISCAL CONSULTANT SERVICES RELATED TO THE POSSIBLE REFUNDING OF THE 2003A TAX ALLOCATION BONDS

This Agreement, entered into this ___ day of July, 2013, by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity (hereinafter referred to as "AGENCY"), and FRASER & ASSOCIATES, a California LLC (hereinafter referred to as "CONSULTANT"), (collectively "PARTIES").

RECITALS

WHEREAS, AGENCY desires to take advantage of the current low interest rate environment in order to minimize its total interest costs on outstanding debt by refunding its Series 2003A Tax Allocation Bonds at a comparatively lower interest rates than the current bond issue's average bond coupon rate and at as low a cost of issuance as possible; and

WHEREAS, AGENCY desires to retain a debt fiscal feasibility consultant whose views are taken into account by the credit rating agencies, underwriters and investors in the process of marketing the bonds to accomplish the goal of minimizing the AGENCY's total interest costs on outstanding debt; and

WHEREAS, AGENCY desires to retain a debt fiscal consultant to provide services and advise on matters pertinent to the refinancing of its Series 2003A Tax Allocation Bonds, such as preparation of a report on the economic feasibility of the Project Areas providing the security of the debt issue; and

WHEREAS, AGENCY has authorized the preparation of an Agreement to retain the services of CONSULTANT as hereinafter set forth; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BY THE PARTIES THAT AGENCY DOES HEREBY RETAIN CONSULTANT ON THE FOLLOWING TERMS AND CONDITIONS:

Section 1. EMPLOYMENT OF CONSULTANT.

AGENCY hereby agrees to engage CONSULTANT, and CONSULTANT hereby agrees to perform the services hereinafter set forth, in accordance with all terms and conditions contained herein. CONSULTANT represents that all professional services required hereunder will be performed directly by CONSULTANT, or under direct supervision of CONSULTANT.

Section 2. SCOPE OF SERVICES AND COMPENSATION.

A. CONSULTANT shall provide services as described in Exhibit "A" entitled "Proposal", attached hereto and made a part hereof.

B. As additional consideration, CONSULTANT and AGENCY agree to abide by the terms and conditions contained in this Agreement.

C. CONSULTANT will, in a professional manner, furnish all labor and all personnel; all supplies, materials, equipment, printing, vehicles, transportation, office space, and facilities; all testing, analyses, and calculations; and all other means, except as otherwise expressly specified to be furnished by AGENCY, that are necessary or proper to complete the work and provide the required professional services.

D. CONSULTANT shall be compensated for work completed in accordance with this Section 2 as follows: (a) not to exceed $20,000 for the performance of certain services reflected as Items 1 through 9 in the Proposal (Exhibit A); (b) subject to the prior written approval of the Treasurer for any such work to be completed by CONSULTANT, an hourly rate of $200 per hour on a time and materials basis but not to exceed a total amount of $3,000 for the performance of additional services reflected in Items 10 and 11 in the Proposal (Exhibit A) relating to document review, bond rating agency presentation and other meetings; and (c) expenses not to exceed $2,500. Combined compensation of fees and expenses payable to Fraser & Associates is a not to exceed amount of $25,500. . CONSULTANT shall be compensated for additional services only upon prior written approval of AGENCY.

E. *If the 2013 Tax Allocation Bonds* *<u>are not issued,</u>* CONSULTANT shall submit a statement of accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses, not to exceed **$25,500**. Payments to CONSULTANT will be made by AGENCY within thirty (30) calendar days of receipt of invoice. AGENCY agrees that the CONSULTANT's billings are correct unless AGENCY, within ten (10) calendar days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event AGENCY disputes part or all of an invoice, AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty (30) calendar days.

F. *If the 2013 Tax Allocation Bonds* *<u>are issued,</u>* CONSULTANT shall submit a statement for total accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses, not to exceed **$25,500**. Payments to CONSULTANT will be made by AGENCY through the 2013 Tax Allocation Bonds Trustee/Escrow Agent and from the proceeds of the 2013 Tax Allocation Bonds within thirty (30) calendar days of receipt of invoice. AGENCY agrees that the CONSULTANT's billings are correct unless AGENCY, within ten (10) calendar days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event AGENCY disputes part or all of an invoice, AGENCY shall pay the undisputed portion of the invoice within the above mentioned thirty (30 calendar days from the proceeds of the 2013 Tax Allocation Bonds.

Section 3. PROJECT COORDINATION AND SUPERVISION.

The AGENCY's Treasurer, currently Kathleen VonAchen, is hereby designated as the PROJECT COORDINATOR for AGENCY and will monitor the progress and execution of this Agreement.

Donald J. Fraser, President of CONSULTANT, is hereby designated as the contact for CONSULTANT and will monitor the progress and execution of this Agreement.

Section 4. LENGTH OF CONTRACT.

The contract between CONSULTANT and AGENCY will be terminated upon completion of the work as set forth in Section 2 above or in accordance with Section 16 below.

Should CONSULTANT begin work on any phase in advance of receiving written authorization to proceed, any professional services performed by CONSULTANT in advance of the said date of authorization shall be considered as having been done at CONSULTANT'S own risk and as a volunteer unless said professional services are so authorized.

Any delay occasioned by causes beyond the control of CONSULTANT may be reason for the granting of extension of time for the completion of the aforesaid services. When such delay occurs, CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing of the cause and the extent of the delay, whereupon the PROJECT COORDINATOR shall ascertain the facts and the extent of the delay and determine whether an extension of time for the completion of the professional services is justified by the circumstances.

Section 5. CHANGES.

If changes in the work seem merited by AGENCY or CONSULTANT, and informal consultations with the other Party indicate that a change is warranted, it shall be processed by AGENCY in the following manner: a letter outlining the changes shall be forwarded to AGENCY by CONSULTANT with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by AGENCY and executed, if approved, by both PARTIES before performance of such services or AGENCY will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

Section 6. OWNERSHIP OF DOCUMENTS.

All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this Agreement shall be considered the property of AGENCY. CONSULTANT may retain such copies of said documents and materials as desired, but shall deliver all original materials to AGENCY.

Section 7. AUDIT OF RECORDS.

7.1. At any time during normal business hours and as often as may be deemed necessary the CONSULTANT shall make available to a representative of AGENCY for examination all of its records with respect to all matters covered by this Agreement and shall permit AGENCY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2. The CONSULTANT shall include the AGENCY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

Section 8. PUBLICATION OF DOCUMENTS.

Except as necessary for performance of service under this Agreement, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement shall be released by CONSULTANT to any other person or agency without AGENCY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by AGENCY, unless otherwise provided by written agreement between the PARTIES. After project completion, CONSULTANT may list the project and the general details in its promotional materials.

Section 9. COVENANT AGAINST CONTINGENT FEES.

CONSULTANT declares that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, AGENCY shall have the right to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Section 10. NO ASSIGNMENTS.

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which AGENCY, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

Section 11. INDEPENDENT CONTRACTOR.

At all times during the term of this Agreement, CONSULTANT and any subcontractors employed by CONSULTANT shall be an independent contractor and shall not be an employee of the AGENCY. AGENCY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, AGENCY shall not have the right to control the means by which CONSULTANT accomplishes its services. Any provision in this Agreement that may appear to give AGENCY the right to direct CONSULTANT or sub consultant as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT shall follow the direction of the AGENCY as to end results of the work only.

Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which AGENCY employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, CONSULTANT being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

Section 12. LICENSES, PERMITS, ETC.

CONSULTANT represents and declares to AGENCY that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT represents and warrants to AGENCY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for CONSULTANT to practice its profession. CONSULTANT shall obtain and maintain a City of Imperial Beach business license during the term of this Agreement.

Section 13. INSURANCE.

CONSULTANT shall maintain, during the term of this Agreement, Employer's Liability Insurance as prescribed by applicable law. Upon request, AGENCY shall be provided with satisfactory evidence that premiums have been paid and CONSULTANT shall deliver to AGENCY certificates of insurance and endorsements as to each policy. Each certificate of insurance shall provide that the policy will not be materially altered or cancelled without first giving ten (10) calendar days written notice to the AGENCY by certified mail. Coverage shall include appropriate waivers of subrogation as to the City of Imperial Beach (the "City") and AGENCY. CONSULTANT agrees to this requirement

irrespective of any other similar obligation imposed on others and CONSULTANT agrees to do so in conformity with the requirements set forth herein including those requirements set forth for certificates of insurance.

Consultant is aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with the provisions of that code before commencing with and during the performance of the work of this contract."

CONSULTANT shall assume liability for the wrongful or negligent acts, errors and omissions of its officers, agents and employees and sub Contractors in regard to any functions or activity carried out by them on behalf of AGENCY pursuant to the terms of this Agreement.

Section 14. CONSULTANT NOT AN AGENT.

Except as AGENCY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of AGENCY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement to bind AGENCY to any obligation whatsoever.

Section 15. INDEMNITY.

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the AGENCY, the City, and their officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the active or sole negligence or willful misconduct by the AGENCY, the City or their elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense AGENCY or the City incurs or makes to or on behalf of an injured employee under the AGENCY's or City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

Section 16. TERMINATION.

AGENCY may terminate this Agreement at any time by giving ten (10) calendar days' written notice to CONSULTANT of such termination and specifying the effective date thereof at least ten (10) calendar days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by CONSULTANT shall, at the option of AGENCY, become the property of AGENCY. If this Agreement is terminated by AGENCY as provided herein, CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

Should CONSULTANT be in default of any covenant or condition hereof, AGENCY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

Section 17. NON-DISCRIMINATION.

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual with a disability. CONSULTANT will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by AGENCY setting forth the provisions of this non-discrimination clause.

Section 18. GENERAL CONDITIONS.

CONSULTANT agrees that it shall provide no services for any private client within the boundaries of AGENCY during the period that this Agreement is in effect, nor shall CONSULTANT, without, previous written permission from the PROJECT COORDINATOR, review any plan, map or other work which to the best of CONSULTANTS knowledge has been submitted by a private client for which the CONSULTANT has performed work within the previous 12 months or anticipates performing work in the succeeding 12 months. CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing whenever CONSULTANT has reason to believe that aforementioned circumstance exists. CONSULTANT knows of no interests where it holds nor of any relationship it has or may have that would constitute a conflict of CONSULTANT performing the duties set forth in this Agreement solely in the best interest of CITY.

Section 19. OFFICE SPACE AND CLERICAL SUPPORT.

CONSULTANT shall provide its own office space and clerical support at its sole cost and expense.

Section 20. SUBCONTRACTORS.

20.1. The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to this Agreement is subject to prior approval by the AGENCY.

20.2. All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work related to this Agreement and for the duration of this Agreement. The CONSULTANT shall require the subcontractor to obtain all policies described in Section 13 above in the amounts required by the AGENCY, which shall not be greater than the amounts required of the CONSULTANT.

20.3. In any dispute between the CONSULTANT and its subcontractor, the AGENCY or the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the AGENCY and the City as described in Section 15 of this Agreement should the AGENCY or the City be made a party to any judicial or administrative proceeding to resolve any such dispute.

Section 21. CONFIDENTIAL RELATIONSHIP.

AGENCY may from time to time communicate to CONSULTANT certain information to enable CONSULTANT to effectively perform the services. CONSULTANT shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of AGENCY. CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Section 21, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information (ii) is, through no fault of CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent of AGENCY. In its performance hereunder, CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

Section 22. MEDIATION.

In the event of a dispute between AGENCY and CONSULTANT concerning the terms of this Agreement or its performance, the PARTIES may, but are not required to, agree to submit such dispute to mediation. If both PARTIES agree to mediation, AGENCY and CONSULTANT agree to cooperate in good faith to promptly select a mediator, to schedule a mediation session, and to attempt to settle the claim or dispute through mediation.

Section 23. NOTICES.

All communications to either Party by the other Party shall be deemed made when received by such Party at its respective name and address, as follows:

Kathleen VonAchen
Treasurer
Imperial Beach Redevelopment Agency Successor Agency
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Donald Fraser
President
Fraser & Associates
225 Holmfirth Court
Roseville, CA 95661

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) business days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

Section 24. CALIFORNIA LAW; VENUE.

This Agreement and its performance shall be governed, interpreted, construed, and regulated by the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

Section 25. ENTIRE AGREEMENT.

This Agreement, and its Attachments and Exhibits, set forth the entire understanding of the PARTIES. There are no other understandings, terms or other agreements expressed or implied, oral or written. The following attachments are a part of this Agreement: **Proposal dated April 3, 2013.** No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

Section 26. SEVERABILITY.

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement shall continue in full force and effect.

Section 27. TIME IS OF ESSENCE.

Time is of the essence for each and every provision of this Agreement that states a time for performance and for every deadline imposed by the PROJECT COORDINATOR.

Section 28. COMPLIANCE WITH LAW.

CONSULTANT shall comply with applicable laws in effect at the time the services are performed hereunder which, to the best of its knowledge, information and belief, apply to its obligations under this Agreement.

Section 29. STATEMENT OF EXPERIENCE.

By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to AGENCY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

Section 30. CONFLICTS OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.

During the term of this Agreement, CONSULTANT shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the AGENCY. CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the AGENCY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the AGENCY.

CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, CONSULTANT shall file Statements of Economic Interest with the City Clerk of the City of Imperial Beach in a timely manner on forms which CONSULTANT shall obtain from the City Clerk.

Section 31. RESPONSIBILITY FOR EQUIPMENT.

AGENCY or the City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by AGENCY or the City. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless AGENCY and the City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

Section 32. NO WAIVER.

No failure of either the AGENCY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

Section 33. DRAFTING AMBIGUITIES.

The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

Section 34. CONFLICTS BETWEEN TERMS.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

Section 35. EXHIBITS INCORPORATED.

Exhibits "A" is incorporated into the Agreement by this reference.

Section 36. SIGNING AUTHORITY.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party hereto harmless if it is later determined that such authority does not exist.

*****SIGNATURES ON FOLLOWING PAGE*****

IN WITNESS WHEREOF the PARTIES hereto have executed this Agreement on the day and year first hereinabove written.

AGENCY:

IMPERIAL BEACH REDEVELOPMENT AGENCY
SUCCESSOR AGENCY,
a public entity

_____
Gary Brown, Executive Director

APPROVED AS TO CONTENT:

_____
Kathleen VonAchen, Treasurer/
Administrative Services Director

APPROVED AS TO FORM:

_____
Jennifer M. Lyon, General Counsel

CONSULTANT:

FRASER & ASSOCIATES,
a California _____

_____
Donald J. Fraser, President

FA FRASER & ASSOCIATES

Property Tax and Financial Consulting

225 Holmfirth Court
Roseville CA 95661

Phone: (916) 791-8958
FAX: (916) 791-9234

April 3, 2013

Mr. Greg Wade
Assistant City Manager / Community Development Director
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Dear Mr. Wade:

Per your request, Fraser & Associates is pleased to provide this proposal for financial and bond services to the Imperial Beach Successor Agency (Agency). The Agency is requesting that Fraser & Associates assist the Agency with the sale of refunding tax allocation bonds for the Imperial Beach Redevelopment Project Area (Project Area).

Scope of Services

Fraser & Associates is prepared to provide an in depth analysis of the tax increment revenues to be generated from the Project Area. In order to accomplish this, we recommend the following scope of services:

1. **Tax Increment Projection**: An estimate of the 2012-13 tax increment revenues expected to be received in the Project Area will be prepared, along with a projection showing the future tax increment revenues estimated to be annually allocated to the Agency. The tax increment projections will include an analysis of the impact of senior liens on revenue available for debt service, including pass through payments.

2. **Analysis of County Allocation Procedures**: A review of County procedures used for the calculation of tax increment, including tax increment from the application of tax rates to incremental value and unitary property taxes, will be prepared for the current year revenue estimate. This will include a review of distributions from the Redevelopment Property Tax Trust Fund prepared by the County. This analysis ensures that the current year revenue estimate is accurate.

3. **Review of Historical Revenues**: Fraser & Associates will review the growth in taxable values over the past five fiscal years and provide a table showing such trends. In addition, an analysis will be prepared of the actual tax increment receipts to the initial County levy in order to determine collection trends.
4. **Appeals Analysis**: An analysis of recently resolved and open appeals will be prepared. The tax increment projections will be revised as needed for the potential impact of appeals.
5. **Housing Market Impact Analysis:** Recent volatility in the housing market has caused rating agencies to require additional information concerning housing prices and property transfers. As a result, the impact that housing price declines have had on the Project Area will be analyzed. We will also review recent sales data in order to determine whether housing price declines and Proposition 8 reductions may be leveling off.
6. **Plan Limits Review**: The Project Area's plan limits will be reviewed in order to determine any potential impact on the bond issue and on the tax increment revenue stream.
7. **Impacts of Redevelopment Dissolution Act**: We will review the impact of AB 26 and AB 1484 on the flow of revenues to the Agency.
8. **Fiscal Consultants Report**: A Fiscal Consultants Report (FCR) will be prepared summarizing the analysis of historical, current and projected tax increment revenues. The FCR will include our methodology in preparing the tax increment study. The FCR is typically included as an appendix to the Official Statement for the bond issue.
9. **Official Statement Tables**: Fraser & Associates will provide tables on the revenues in the Project Area for inclusion in the offering document based on the data utilized in the services described above.
10. **Document Review**: Other documents (Official Statement; Indenture of Trust; etc.) will be reviewed and commented on by Fraser & Associates.
11. **Bond Rating Agency and Other Meetings**: Fraser & Associates will be available to represent the Agency in meetings and presentations to the bond rating agencies (Moody's and Standard and Poor's). Other meetings will also be attended, as requested by the Agency.

Compensation

Services shall be compensated on the basis of a fixed fee of Twenty Thousand Dollars ($20,000) for items one through nine above, inclusive of one meeting. Service items ten and eleven shall be compensated on a time and material basis in accordance with my standard hourly rate of $200 per hour.

FA FRASER & ASSOCIATES

It is estimated that hourly rate services will not exceed Three Thousand Dollars ($3,000). Expenses are estimated at $2,500. Expenses include, but are not limited to: authorized travel; mileage at the current IRS per mile rate or equivalent rental car fee; copy expenses; shipping and messenger services; long distance phone calls; the acquisition of property tax data (Top 10, etc.) and other similar expenses.

Payment for services can be made from the cost of issuance fund created as part of the bond issue, but the fee is not contingent upon a successful closing of the bond issue. If the bond issue is not completed, payment shall still be owed to Fraser & Associates.

Fraser & Associates appreciates the opportunity to submit this proposal and looks forward to with you again. Please let me know if you have any questions.

Sincerely,

Donald J. Fraser