

## RESOLUTION NO. OB-14-34

### A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING AN AGREEMENT REGARDING RETENTION AND EXPENDITURE OF BOND PROCEEDS FROM 2010 TAX ALLOCATION BONDS BETWEEN THE SUCCESSOR AGENCY AND THE CITY OF IMPERIAL BEACH AS AN ENFORCEABLE OBLIGATION, AND APPROVING RELATED ACTIONS

**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 Redevelopment Agency had the responsibility of implementing the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area, duly adopted by the City Council of the City ("City Council") on February 7, 1996 by Ordinance No. 96-901, as amended by the City Council on July 18, 2001 by the adoption of Ordinance No. 01-970, as further amended by the City Council on December 20, 2006 by the adoption of Ordinance No. 2006-1066, and as further amended by the City Council on March 19, 2008 by the adoption of Ordinance No. 2008-1066 ("Redevelopment Plan"); and

**WHEREAS**, pursuant to a Trust Indenture dated as of November 1, 2010 and executed by and between the Redevelopment Agency and Wells Fargo Bank, National Association ("Trustee"), the Redevelopment Agency issued the 2010 Tax Allocation Bonds (Palm Avenue/Commercial Redevelopment Project), in the aggregate principal amount of \$21,595,000 ("2010 Tax Allocation Bonds"). In connection with the refunding of two loan agreements related to the Tax Allocation Bonds, 2003 Series A (Palm Avenue/Commercial Redevelopment Project), the Trust Indenture was supplemented by a First Supplemental Indenture of Trust dated December 1, 2013 executed by and between the Successor Agency (defined below) and the Trustee; and

**WHEREAS**, pursuant to Page 4 of the Official Statement for the 2010 Tax Allocation Bonds, the 2010 Tax Allocation Bonds are required to be used to provide financing for projects of benefit to the Palm Avenue/Commercial Redevelopment Project Area in accordance with the Redevelopment Plan and the Redevelopment Law. More specifically, the 2010 Tax Allocation Bonds are to be used for Hotel Redevelopment Project; Street and Alley Improvements; Airfield Property Improvements; Library Expansion; Palm Avenue Corridor Improvements; City Facility Upgrades; and other projects within or of benefit to the Palm Avenue/Commercial Redevelopment Project Area in the Redevelopment Agency's discretion ("Financing Plan"); and

**WHEREAS**, Assembly Bill No.X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"), 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 H&S Code; 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**, H&S Code Section 34179 of AB 26 establishes a seven (7) member local entity with respect to each successor agency with fiduciary responsibilities to holders of enforceable obligations and taxing entities that benefit from distributions of property taxes, 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 H&S Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in H&S Code Sections 34179 through 34181 of AB 26; and

**WHEREAS**, AB 26 and related H&S Code provisions were subsequently amended. AB 26 and all subsequent amendments are hereinafter referred to as the "Dissolution Act"; and

**WHEREAS**, on April 12, 2013, the California Department of Finance ("DOF") issued a Finding of Completion to the Successor Agency pursuant to H&S Code Section 34179.7 of the Dissolution Act, which specifically authorizes the Successor Agency to utilize bond proceeds issued prior to January 1, 2011 in a manner consistent with the original bond covenants pursuant to H&S Code Section 34191.4(c); and

**WHEREAS**, H&S Code Section 34191.4(c) of the Dissolution Act provides that once a Finding of Completion has been issued by the DOF, bond proceeds derived from bonds issued on or before December 31, 2010 shall be used for the purposes for which the bonds were sold, and bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations shall thereafter be expended in a manner consistent with the original bond covenants. An expenditure made pursuant to H&S Code Section 34191.4(c) shall constitute the creation of excess bond proceeds obligations to be paid from the excess bond proceeds. Excess bond proceeds obligations shall be listed separately on a Recognized Obligation Payment Schedule ("ROPS"); and

**WHEREAS**, as of August 6, 2014, a total amount of \$1,674,452 in bond proceeds ("Bond Proceeds") from the 2010 Tax Allocation Bonds of the Redevelopment Agency remain to be spent pursuant to the Trust Indenture and Official Statement of the 2010 Tax Allocation Bonds. Of this amount, certain Bond Proceeds in the approximate amount of \$1,274,452 were delivered to the Successor Agency by the Trustee during the ROPS 13-14B period for expenditure toward projects consistent with the Trust Indenture and the Official Statement and are currently retained by the Successor Agency, and certain Bond Proceeds in the approximate amount of \$400,000 were previously transferred to the City for expenditure toward a specific project but remain unspent and available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement; and

**WHEREAS**, the Successor Agency and the City desire to enter into an "Agreement Regarding Retention and Expenditure of Bond Proceeds from 2010 Tax Allocation Bonds"

("Agreement") in order for the City to receive and retain the Bond Proceeds for the City's use and expenditure of the Bond Proceeds consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds and all applicable covenants therein, and the requirements of the Redevelopment Law applicable to the expenditure of redevelopment funds; and

**WHEREAS**, under the Agreement, the projects for which the Bond Proceeds are anticipated to be expended include, without limitation, approximately \$1,274,452 for use toward the improvement of fourteen (14) unpaved alleys within the Palm Avenue/Commercial Redevelopment Project, and approximately \$400,000 for use toward the development of the proposed Tower23 IB Hotel, or for other projects as otherwise permitted by the 2010 Tax Allocation Bonds; and

**WHEREAS**, pursuant to H&S Code Sections 34178(a) and 34180(h) of the Dissolution Act, the Successor Agency may enter into the Agreement with the City upon obtaining the approval of the Oversight Board. In this regard, the Successor Agency and the City approved the Agreement by Resolution at their respective public meetings on August 6, 2014, and the Successor Agency has now submitted the Agreement to this Oversight Board for consideration of approval at this Oversight Board meeting of August 13, 2014. If the Agreement is approved by this Oversight Board, then at subsequent meetings of the Successor Agency and the Oversight Board, respectively, the Successor Agency and the Oversight Board will each consider the approval of the ROPS 14-15B for the period of January 1, 2015 through June 30, 2015, which ROPS 14-15B will include the expenditure of the Bond Proceeds pursuant to the Agreement as an enforceable obligation; and

**WHEREAS**, the activity proposed for approval by this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines; and

**WHEREAS**, the activity proposed for approval by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity proposed by 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; and

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

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

- Section 1.** The Oversight Board determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board determines, based on its information and belief, that the proposed use and expenditure of the Bond Proceeds under the Agreement are consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds, and that there are sufficient Bond Proceeds available for the designated purposes.

**Section 3.** The Oversight Board approves the Agreement between the Successor Agency and the City as an enforceable obligation, and the Successor Agency's entry into said Agreement.

**Section 4.** The Oversight Board authorizes and directs the Executive Director of the Successor Agency or designee (i) to take all actions and to execute any and all documents, instruments, and agreements necessary or desirable on behalf of the Successor Agency, as approved by the Executive Director and the Successor Agency General Counsel, including without limitation the Agreement, in order to implement and effectuate the Agreement and all other actions approved by this Resolution, including, without limitation, approving changes, implementations, or revisions to documents, instruments, and agreements as determined necessary by the Executive Director, or designee; (ii) to administer the Successor Agency's obligations, responsibilities, and duties to be performed pursuant to this Resolution and all documents, instruments, and agreements required by the Agreement; (iii) to include the expenditure of the Bond Proceeds pursuant to this Agreement on the ROPS 14-15B as an enforceable obligation; and (iv) to provide such notifications as required by the Dissolution Act.

**Section 5.** 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 Oversight Board declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

**Section 6.** The Oversight Board 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 the activity approved by 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.** This Resolution shall take effect upon the date of its adoption and is subject to review by the Department of Finance in accordance with H&S Code Section 34179(h) of the Dissolution Act.

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 13<sup>th</sup> day of August 2014, by the following vote:

<b>AYES:</b>	<b>BOARD MEMBERS:</b>	<b>FOLTZ, WINTER, KAMINSKY, KING, SAADAT</b>
<b>NOES:</b>	<b>BOARD MEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>BOARD MEMBERS:</b>	<b>HENTSCHKE, YANDA</b>



**MAYDA C. WINTER**  
**CHAIRPERSON**

**ATTEST:**



**JACQUELINE M. HALD, MMC**  
**SUCCESSOR AGENCY SECRETARY**

A handwritten signature in blue ink, appearing to read 'J. Hald', written over the typed name of the Successor Agency Secretary.