

**OVERSIGHT BOARD OF THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

**A G E N D A**

**JUNE 12, 2013**

**City of Imperial Beach Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**REGULAR MEETING – 10:30 a.m.**

The Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at Oversight Board meetings, please contact the City Clerk's/Secretary's Office at (619) 423-8301, as far in advance of the meeting as possible.

- 1. CALL TO ORDER**
- 2. ROLL CALL BY CITY CLERK/SECRETARY**
- 3. PUBLIC COMMENTS** - Each person wishing to address the Oversight Board regarding items not on the posted agenda may do so at this time. In accordance with State law, the Oversight Board may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the Successor Agency staff or placed on a future agenda.
- 4. REPORTS**
  - A.\* INTRODUCTION OF AND OATH OF OFFICE ADMINISTERED TO WAYNE YANDA, SOUTHWESTERN COMMUNITY COLLEGE DISTRICT REPRESENTATIVE.**  
\*No staff report
  - B. APPROVAL OF MINUTES.**  
Recommendation: Approve the Oversight Board Regular Meeting Minutes of April 10, 2013.
  - C. RESOLUTION NO. OB-13-18 DIRECTING THE SUCCESSOR AGENCY TO COMMENCE THE REFINANCING OR REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS FOR DEBT SERVICE SAVINGS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34177.5 AND AUTHORIZING THE SUCCESSOR AGENCY TO RECOVER ITS COSTS THEREFOR.**  
Recommendation: Adopt resolution.

*Continued on Next Page*

<p>Any writings or documents provided to a majority of the Oversight Board regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.</p>
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4. **REPORTS (Continued)**

- D. **ADOPTION OF RESOLUTION NO. OB-13-19 APPROVING, AUTHORIZING AND DIRECTING THE SUCCESSOR AGENCY EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND FIRST SOUTHWEST COMPANY FOR FINANCIAL ADVISORY SERVICES FOR THE POTENTIAL REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS**

**ADOPTION OF RESOLUTION NO. OB-13-20 APPROVING, AUTHORIZING AND DIRECTING THE SUCCESSOR AGENCY EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND JONES HALL FOR BOTH BOND AND DISCLOSURE COUNSEL SERVICES FOR THE POTENTIAL REFUNDING OF THE 2003A TAX ALLOCATION REVENUE BONDS**

Recommendation: That the Oversight Board (1) adopt Resolution No. OB-13-19 approving the Professional Services Agreement between the Successor Agency and First Southwest Company and authorizing and directing the Successor Agency Executive Director to enter into said Agreement for financial advisory professional services; and (2) adopt Resolution No. OB-13-20 approving the Professional Services Agreement between the Successor Agency and Jones Hall and authorizing and directing the Successor Agency Executive Director to enter into said Agreement for both bond and disclosure counsel legal and professional services. All of these services would include developing a financing plan for the refunding, selecting financing team members, and proceeding with preparation of bond documents and the preliminary official statement for future authorization by the Successor Agency, Oversight Board, the DOF if review requested, as well as the City.

In addition, and as part of Resolution No. OB-13-19 in connection with the Professional Services Agreement with First Southwest Company, Successor Agency staff recommends that the Oversight Board agree that if the Series 2003 TABs refunding is not completed by February 28, 2014, then accrued compensation and expenses not-to-exceed \$19,000 will be paid to First Southwest Company and that the Successor Agency seek payment or reimbursement of this cost as an enforceable obligation of the Successor Agency as part of its ROPS 13-14B.

- E. **RESOLUTION NO. OB-13-21 APPROVING THE SECOND AMENDMENT TO THE AGREEMENT WITH MCDUGAL, LOVE, ECKIS, BOEHMER & FOLEY TO EXTEND THE TERM FOR TWO YEARS FOR LEGAL SERVICES**

Recommendation: Adopt resolution.

- F. **ADJOURNMENT**

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/s/  
Jacqueline M. Hald, MMC  
City Clerk/Secretary

For your convenience, a copy of the agenda and meeting packet may be viewed in the office of the City Clerk at City Hall or on our website at [www.ImperialBeachCA.gov](http://www.ImperialBeachCA.gov). Go to the Imperial Beach Redevelopment Agency Successor Agency page located under the Government Section.

STATE OF CALIFORNIA

BRICE W. HARRIS, CHANCELLOR

**CALIFORNIA COMMUNITY COLLEGES  
CHANCELLOR'S OFFICE**

1102 Q STREET  
SACRAMENTO, CA 95811-6549  
(916) 445-8752  
<http://www.cccco.edu>



March 25, 2013

Tracy Sandoval, Auditor-Controller  
County of San Diego  
County Administration Center  
1600 Pacific Highway, Room 166  
San Diego, CA 92101

Dear Ms. Sandoval,

As part of the 2011-12 state budget, ABX1 26 dissolved Redevelopment Agencies (RDAs) and provided for Successor Agencies to be formed to administer the payment obligations of the former RDAs. The legislation stipulated that each successor agency would have an oversight board, and it prescribed the number and types of members on each board. As Chancellor of the California Community Colleges, I am charged with the responsibility of appointing a community college representative to each oversight board.

Although we have previously made appointments for RDA oversight boards in San Diego County, I have been asked to rescind one of those appointments and reappoint a different individual to the board. Therefore, I hereby appoint the following person to represent the interests of the Southwestern Community College District for the following oversight board, and this appointment supersedes the one that was made in our letter dated March 2, 2012:

<u>Redevelopment Agency</u>	<u>Community College District</u>	<u>Representative</u>
Imperial Beach	Southwestern	Wayne Yanda

Please notify the affected city of this change to its oversight board.

If you have any questions about this appointment, please contact Diane Brady, Fiscal Policy Administrator, at (916) 324-2564 or [dbrady@cccoco.edu](mailto:dbrady@cccoco.edu).

Sincerely,

Signature on File

Brice W. Harris  
Chancellor

CC: Southwestern Community College District  
California Department of Finance

**OVERSIGHT BOARD OF THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

**MINUTES**

**APRIL 10, 2013**

**City of Imperial Beach Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

**SPECIAL MEETING – 10:30 a.m.**

**1. CALL TO ORDER**

CHAIR PERSON WINTER called the meeting to order at 10:31 a.m.

**2. ROLL CALL BY CITY CLERK/SECRETARY**

Oversight Board Members present: West, Saadat, Hentschke, Goodwin-Colbert, Foltz

Oversight Board Members absent: None

Vice Chair present: Fernandez

Chair present: Winter

Staff present: Deputy Executive Director Wade, City Attorney Lyon, Administrative Services Director VonAchen, City Clerk/Secretary Hald

**3. PUBLIC COMMENTS**

None.

**4. REPORTS**

**A. APPROVAL OF MINUTES.**

**MOTION BY WINTER, SECOND BY SAADAT, TO APPROVE THE OVERSIGHT BOARD REGULAR MEETING MINUTES OF FEBRUARY 13, 2013. MOTION CARRIED UNANIMOUSLY.**

**B. ADOPTION OF RESOLUTION NO. OB-13-17 DISPUTING THE FINDINGS OF THE COUNTY AUDITOR-CONTROLLER IN ITS REVIEW OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) FOR THE PERIOD OF JULY 1, 2013 THROUGH DECEMBER 31, 2013 AND REFERRING THE MATTER TO THE STATE DEPARTMENT OF FINANCE FOR CONSIDERATION.**

CHAIR PERSON WINTER introduced the item.

DEPUTY EXECUTIVE DIRECTOR WADE reported that the resolution before the Board disputes the findings of the County Auditor-Controller regarding their review of the ROPS for the period of July 1, 2013 through December 31, 2013 (13-14A). He reviewed the County Auditor-Controller's comments and staff's response to each comment as detailed in the staff report.

**MOTION BY WINTER, SECOND BY WEST, TO ADOPT RESOLUTION NO. OB-13-17 DISPUTING THE FINDINGS OF THE COUNTY AUDITOR-CONTROLLER IN ITS REVIEW OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) FOR THE PERIOD OF JULY 1, 2013 THROUGH DECEMBER 31, 2013 AND REFERRING THE MATTER TO THE STATE DEPARTMENT OF FINANCE FOR CONSIDERATION. MOTION CARRIED UNANIMOUSLY.**

DEPUTY EXECUTIVE DIRECTOR WADE reported on the meet and confer that took place between City Staff and the DOF regarding the Due Diligence Review for the non-housing assets. DOF Staff questioned the transfer of \$1.7 million that supported staff administrative costs. The transfer occurred on January 1, 2011, before dissolution of redevelopment agencies. The DOF agreed with City staff and revised the DOF's opinion and said that there is \$0 available to transfer to other taxing entities. He reviewed the next steps and was hopeful that a finding of completion would be forthcoming, followed by an approval of the Long Range Property Management Plan.

**5. ADJOURNMENT**

The meeting was adjourned at 11:13 a.m.

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**MAYDA C. WINTER, CHAIR PERSON**

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**JACQUELINE M. HALD, MMC  
CITY CLERK/SECRETARY**

**STAFF REPORT  
OVERSIGHT BOARD  
OF THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

**TO:** CHAIR AND MEMBERS OF THE OVERSIGHT BOARD OF THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY  
SUCCESSOR AGENCY

**FROM:** GARY BROWN, EXECUTIVE DIRECTOR  
GREG WADE, DEPUTY DIRECTOR  
KATHLEEN VONACHEN, TREASURER

**MEETING DATE:** JUNE 12, 2013

**SUBJECT:** ADOPTION OF RESOLUTION NO. OB-13-18 DIRECTING THE  
SUCCESSOR AGENCY TO COMMENCE THE REFINANCING  
OR REFUNDING OF THE SERIES 2003A TAX ALLOCATION  
REVENUE BONDS FOR DEBT SERVICE SAVINGS PURSUANT  
TO CALIFORNIA HEALTH AND SAFETY CODE SECTION  
34177.5 AND AUTHORIZING THE SUCCESSOR AGENCY TO  
RECOVER ITS COSTS THEREFOR

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**BACKGROUND:**

On December 11, 2003, the former Imperial Beach Redevelopment Agency (the "Former Agency") and the Imperial Beach Public Financing Authority (the "Financing Authority"), a Joint Powers Authority between the City of Imperial Beach (the "City") and the Former Agency, issued Tax Allocation Revenue Bonds, Series 2003A (the "Series 2003A TABs") secured by the Former 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.

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 12, 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%.

Pursuant to Assembly Bill No. X1 26 ("AB 26") and Assembly Bill No. 1484 ("AB 1484") (collectively referred to herein as the "Dissolution Act"), and specifically California Health and Safety Code ("HSC") Section 34177.5(f) of the Dissolution Act, the Oversight Board may direct the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") to commence the refinancing or refunding of the Series 2003A TABs, among other actions authorized by HSC Section 34177.5(a) of the Dissolution Act, for debt service savings so long

as the Successor Agency is able to recover its related costs in connection with the transaction.

**DISCUSSION:**

Upon the direction of the Oversight Board, 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).

Further, pursuant to HSC Section 34177.5(h) of the Dissolution Act, the Successor Agency shall make use of an independent financial advisor in developing financing proposals and shall make the work products of the financial advisor available to the California Department of Finance (the "DOF") at its request.

With a refunding of the Series 2003A TABs, based on interest rates in the current market, annual debt service savings are projected to average \$295,000 from fiscal year 2013-14 through 2032-33, and total \$5.93 million. Accounting for the time value of money, the discounted present value savings are \$4.03 million, which is equivalent to 22.44% of the \$17,965,000 of the Series 2003A TABs to be refunded.

With the City's share, as a taxing entity, of distributions from the Redevelopment Property Tax Trust Fund ("RPTTF") is approximately 26%, the projected refunding savings allocated to the City's General Fund, based on anticipated payments of RPTTF distributions to the City pursuant to HSC Section 34183(a) of the Dissolution Act, are estimated to be \$77,000 annually, \$1.54 million in total or \$1.05 million on a present value basis. The other taxing entities will likely benefit from the Refunding Bonds because the Successor Agency's ongoing debt service payments will be less than they are currently and therefore, less funds from the RPTTF will be distributed to the Successor Agency for said payments leaving greater funds to be distributed to the other taxing entities pursuant to HSC Section 34183(a) of the Dissolution Act.

In order for the Successor Agency to issue or cause the issuance of the Refunding Bonds, various formal approvals are necessary from the Successor Agency, its Oversight Board and the DOF if the DOF requests review, in addition to approval from the City. It is anticipated that the Successor Agency and Oversight Board would first authorize the issuance of the Refunding Bonds by approving substantially final bond documents, including, without limitation, the trust indenture and preliminary official statement (the "Financing Package"). The Successor Agency staff would also submit the Financing Package to the DOF. Assuming approval from the DOF if review is requested, the issuance of the Refunding Bonds would be authorized.

However, if material changes to the bond documents are required by the DOF or other material events occur, then the Financing Package would be resubmitted to the Successor Agency and the Oversight Board, as well as the City, in order to re-authorize the issuance of the Refunding Bonds. Although unlikely, a re-authorization from the Successor Agency, City and Oversight Board may be necessary due to any material changes made to the financing documents after initial approval, any stipulations added by the DOF, or changes in the municipal bond market. Further, the Successor Agency would submit the Financing Package to Standard & Poor's, requesting receipt of a credit rating shortly after the Refunding Bonds are authorized by the Successor Agency and the Oversight Board.

Presented on the next page are targeted key activities and preliminary dates.

**Imperial Beach Redevelopment Agency Successor Agency  
 Refunding of Series 2003A TABs – Preliminary Financing Schedule (5.31.13)**

<b>Week</b>	<b>Financing Activity</b>
Jun 07	Kick-off conference call with working group
Jun 24	First distribution of financing documents
Jul 08	Working group meeting/conference call
Jul 22	Second distribution of financing documents
Jul 29	Working group meeting/conference call
Aug 02	Financing Package provided to Successor Agency, Oversight Board, & DOF
Aug 07	Successor Agency authorize issuance of the Refunding Bonds
Aug 14	Oversight Board authorize issuance of the Refunding Bonds
Aug 19	Submit approved Financing Package to DOF for potential review
Oct 14	Deadline for DOF to approve the OB action or return item for reconsideration
Oct 21	Distribute UPDATED Financing Package to Successor Agency & Oversight Board, if needed; Distribute credit packages to Standard & Poor's and bond insurer(s)
Nov 01	Successor Agency & Oversight Board re-authorize issuance of the Refunding Bonds, if needed; Successor Agency approval Nov. 6 and Oversight Board approval Nov. 13
Nov 18	Receive Standard & Poor's Rating / Distribute Preliminary Official Statement
Dec 02	Pricing of Refunding Bonds
Dec 16	Closing of transaction (2003A Bonds legally defeased)

Financing Team Members

Assuming that the Oversight Board directs the Successor Agency to commence the refunding of the Series 2003 TABs, and as part of the next Oversight Board agenda item and proposed Resolution No. OB-13-19 and Resolution No. OB-13-20, the Oversight Board would authorize and direct the Successor Agency to retain the services of First Southwest Company for financial advisory services and the services of Jones Hall for both bond and disclosure services. Both consultants would be part of the financing team that will be involved in the Refunding Bonds transaction. The following parties are proposed to serve as members of the financing team for the Refunding Bonds:

1. Bond Counsel – Jones Hall
  - a) The law firm retained to provide a legal opinion confirming that the issuer is authorized to issue proposed securities, the issuer has met all legal requirements necessary for issuance, and interest on the proposed securities will be exempt from federal income taxation and, where applicable, from state and local taxation.
  - b) Prepares, or reviews and advises the issuer regarding, authorizing resolutions, ordinances, trust indentures, official statements, validation proceedings and litigation.
  
2. Disclosure Counsel – Jones Hall
  - a) The law firm retained to prepare the Official Statement, the Bond Purchase Contract, the Continuing Disclosure Agreement, and any Blue Sky Memoranda.
  - b) The Official Statement is the primary and official source of material information about the issuer and the securities in the transaction.

3. Fiscal Consultant (consultant to be determined)
  - a) The firm retained to prepare a report on the economic feasibility of the Project Areas providing the security of the debt issue.
  - b) The views of the feasibility consultant are taken into account by the credit rating agencies, underwriters and investors in the process of marketing the bonds.
  
4. Financial Advisor, First Southwest Company:
  - a) A professional consultant retained to advise and assist the issuer in formulating and/or executing a debt financing plan to accomplish the public purposes chosen by the issuer. Advises the issuer on matters pertinent to the debt issue, such as structure, timing, marketing, credit enhancements, fairness of pricing, terms, and credit ratings.
  - b) Serve issuer in a "fiduciary capacity", representing the issuer's interests in negotiations with underwriters, rating agencies, banks and other parties.
  - c) Financial advisory firms are required to register with the Securities and Exchange Commission (SEC) and with the Municipal Securities Rulemaking Board (MSRB), and are regulated by the MSRB.
  
5. Wells Fargo Bank, Trustee/Escrow Agent
  - a) A commercial bank or trust company retained to perform administrative duties relating to a bond issue, such as establishing and holding bond funds and accounts, disbursing bond proceeds for authorized purposes, paying principal and interest to bondholders, and executing investments.

A sixth financing team member, Underwriter or Investment Banker, will be selected through a request for qualifications/proposal process later in the financing process. The Underwriter or Investment Banker would meet the following requirements:

- a) A dealer which purchases from the issuer a new issue of municipal securities for resale to investors; has an "arm's-length relationship" with the issuer.
- b) Investment banking or underwriting firms are required to register with the SEC and with the MSRB, and follow the rules set out by both the SEC and the MSRB.

First Southwest Company (Financial Advisor), Jones Hall (Bond and Disclosure Counsel), and the additional financing team members listed above would provide professional services to the Successor Agency. Costs for said professional services would primarily be funded with the proceeds through the issuance of the Refunding Bonds with one exception described below. As is typical in municipal bond financing, the professional services costs of the financing team members, with the exception of the costs discussed below, are only paid if the bond deal is successfully completed, or closed. In other words, payment of the costs of issuance is generally made on a contingency basis. The Successor Agency's and the Oversight Board's approval of the costs of issuance will be proposed as part of their respective resolutions that will authorize the issuance of the Refunding Bonds and approve the bond documents, which staff will present to the Successor Agency, Oversight Board and City Council at a future date. All contingent costs of issuance would be a part of the financing documents submitted to the DOF for review and considered enforceable obligations of the Successor Agency, and would be deducted from the proceeds of the Refunding Bonds. The approval by the Successor Agency and the Oversight Board of the bond documents and the contingent costs of issuance contained within said documents, and the DOF if review is requested, would constitute approval of the costs of issuance as enforceable obligations of the Successor Agency and would likely not be required

to be included on the ROPS 13-14B. However, if required by the DOF, these costs of issuance would be included on the ROPS 13-14B for approval.

There is one exception, however, to the financing team members' rendering their services on a contingency basis. This exception pertains to a portion of the total professional services fees and expenses of First Southwest Company (the Financial Advisor) in an amount not-to-exceed \$19,000 that would not be paid from proceeds of the Refunding Bonds if the bond deal is not completed, but rather would be an obligation of the Successor Agency and paid by the Successor Agency as non-contingent costs. Because completion of the potential bond issue is subject to approval by the Oversight Board and potential approval by the DOF if review is requested, and is a unique and particularly complex bond issue given the recent dissolution of redevelopment agencies, First Southwest Company has proposed that, if the Refunding Bonds are not issued by February 28, 2014, accrued compensation and any accrued expenses not-to-exceed \$19,000 will be due and payable by the Successor Agency. This \$19,000 is part of the total \$50,000 proposed by First Southwest Company for its financial advisory services. If the Series 2003A TABs refinancing and the Refunding Bonds do not close by February 28, 2014, the not-to-exceed \$19,000 non-contingent portion of the financial advisory fees and accrued costs would be paid by the Successor Agency and will be included in the ROPS 13-14B for approval as a proposed enforceable obligation of the Successor Agency. If the Refunding Bonds are issued by February 28, 2014, then the entire not-to-exceed \$50,000 (which includes the \$19,000 non-contingent portion) would be funded with proceeds from the issuance of the Refunding Bonds.

**ENVIRONMENTAL DETERMINATION:**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

Based on interest rates in the current market, annual debt service savings are projected to average \$295,000 from fiscal year 2013-14 through 2032-33, and total \$5.93 million. Accounting for the time value of money, the discounted present value savings are \$4.03 million, which is equivalent to 22.44% of the \$17,965,000 of the Series 2003A TABs to be refinanced/refunded. As the City's share of distributions from the RPTTF is approximately 26%, the projected refunding savings allocated to the City's General Fund are estimated at \$77,000 annually, \$1.54 million in total, or \$1.05 million on a present value basis. The fiscal impact in FY 2013-14 is estimated to be an additional \$77,000 received by the City's General Fund as part of the corresponding share of funds released from the RPTTF. The other taxing entities will likely benefit from the Refunding Bonds because the Successor Agency's ongoing debt service payments will be less than they are currently and therefore, less funds from the RPTTF will be distributed to the Successor Agency for said payments leaving greater funds to be distributed to the other taxing entities pursuant to HSC Section 34183(a) of the Dissolution Act.

**DIRECTOR'S RECOMMENDATION:**

Staff recommends the Oversight Board adopt Resolution No. OB-13-18 directing the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs for debt service savings pursuant to HSC Section 34177.5 of the Dissolution Act and authorizing the Successor Agency to recover its costs therefor.

Attachments:

1. Resolution No. OB-13-18

RESOLUTION NO. OB-13-18

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY DIRECTING THE SUCCESSOR AGENCY TO COMMENCE THE REFINANCING OR REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS FOR DEBT SERVICE SAVINGS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34177.5 AND AUTHORIZING THE SUCCESSOR AGENCY TO RECOVER ITS COSTS THEREFOR**

**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 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 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. 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 12, 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, and specifically HSC Section 34177.5(f) of the Dissolution Act, the Oversight Board may direct the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs, among other actions authorized by HSC Section 34177.5(a) of the Dissolution Act, for debt service savings so long as the Successor Agency is able to recover its related costs in connection with the transaction; and

**WHEREAS**, upon the direction of the Oversight Board, 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**, pursuant to HSC Section 34177.5(h) of the Dissolution Act, the Successor Agency shall make use of an independent financial advisor in developing financing proposals and shall make the work products of the financial advisor available to the DOF at its request.

**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 of an average of \$295,000 from fiscal year 2013-14 through 2032-33, and for a total of \$5.93 million. Accounting for the time value of money, the discounted present value savings are \$4.03 million, which is equivalent to 22.44% of the \$17,965,000 of the Series 2003A TABs to be refunded; and

**WHEREAS**, the Oversight Board desires to take advantage of the current low interest

rate environment in order to reduce the Successor Agency's total interest costs on outstanding debt by having the Successor Agency commence the refinancing or refunding of 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**, in order to effectuate the refinancing or refunding of the Series 2003A TABs, the Oversight Board desires to direct the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs for debt service savings pursuant to HSC Section 34177.5 of the Dissolution Act and authorizing the Successor Agency to recover its costs therefor; 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 foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board hereby directs the Successor Agency to commence the refinancing or refunding of the Series 2003A Tax Allocation Revenue Bonds for debt service savings pursuant to California Health and Safety Code Section 34177.5 of the Dissolution Act and authorizes the Successor Agency to recover its costs therefor.
- Section 3.** The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to take such other actions and execute such documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board.
- Section 4.** 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 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 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 its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 6.** This Resolution shall take effect upon the date of its adoption

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 12<sup>th</sup> day of June 2013, by the following vote:

**AYES:**            **BOARD MEMBERS:**  
**NOES:**           **BOARD MEMBERS:**  
**ABSENT:**        **BOARD MEMBERS:**

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**MAYDA WINTER**  
**CHAIRPERSON**

**ATTEST:**

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

STAFF REPORT  
OVERSIGHT BOARD  
OF THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

TO: CHAIR AND MEMBERS OF THE OVERSIGHT BOARD OF THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY  
SUCCESSOR AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR  
GREG WADE, DEPUTY DIRECTOR  
KATHLEEN VONACHEN, TREASURER

MEETING DATE: JUNE 12, 2013

SUBJECT: ADOPTION OF RESOLUTION NO. OB-13-19 APPROVING,  
AND AUTHORIZING AND DIRECTING THE SUCCESSOR  
AGENCY EXECUTIVE DIRECTOR TO ENTER INTO, A  
PROFESSIONAL SERVICES AGREEMENT BETWEEN THE  
SUCCESSOR AGENCY AND FIRST SOUTHWEST COMPANY  
FOR FINANCIAL ADVISORY SERVICES FOR THE POTENTIAL  
REFUNDING OF THE SERIES 2003A TAX ALLOCATION  
REVENUE BONDS

ADOPTION OF RESOLUTION NO. OB-13-20 APPROVING,  
AND AUTHORIZING AND DIRECTING THE SUCCESSOR  
AGENCY EXECUTIVE DIRECTOR TO ENTER INTO, A  
PROFESSIONAL SERVICES AGREEMENT BETWEEN THE  
SUCCESSOR AGENCY AND JONES HALL FOR BOTH BOND  
AND DISCLOSURE COUNSEL SERVICES FOR THE  
POTENTIAL REFUNDING OF THE 2003A TAX ALLOCATION  
REVENUE BONDS

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**BACKGROUND:**

On December 11, 2003, the former Imperial Beach Redevelopment Agency (the "Former Agency") and the Imperial Beach Public Financing Authority (the "Financing Authority"), a Joint Powers Authority between the City of Imperial Beach (the "City") and the Former Agency, issued Tax Allocation Revenue Bonds, Series 2003A (the "Series 2003A TABs") secured by the Former 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.

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 5, 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%.

Pursuant to Assembly Bill No. X1 26 ("AB 26") and Assembly Bill No. 1484 ("AB 1484") (collectively referred to herein as the "Dissolution Act"), and specifically California Health and Safety Code ("HSC") Section 34177.5(f) of the Dissolution Act, the Oversight Board may direct the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") to commence the refinancing or refunding of the Series 2003A TABs, among other actions authorized by HSC Section 34177.5(a) of the Dissolution Act, for debt service savings so long as the Successor Agency is able to recover its related costs in connection with the transaction.

Prior to the Oversight Board's consideration of this agenda item but at the same meeting of the Oversight Board, the Oversight Board will have considered directing the Successor Agency to commence with the refinancing or refunding of the Series 2003A TABs for debt service savings pursuant to HSC Section 34177.5 of the Dissolution Act and authorizing the Successor Agency to recover its costs therefor.

Upon the direction of the Oversight Board, 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).

Further, pursuant to HSC Section 34177.5(h) of the Dissolution Act, the Successor Agency shall make use of an independent financial advisor in developing financing proposals and shall make the work products of the financial advisor available to the California Department of Finance (the "DOF") at its request.

In furtherance of HSC Section 34177.5(h) of the Dissolution Act, and in anticipation of the Oversight Board's direction pursuant to HSC Section 34177.5(f) of the Dissolution Act that the Successor Agency commence the refinancing or refunding of the Series 2013A TABs for debt service savings, the Successor Agency, at its meeting held on June 5, 2013, adopted Resolution No. SA-13-24 and Resolution No. SA-13-25, thereby approving the Professional Services Agreements with First Southwest Company and Jones Hall, respectively, and authorizing the Successor Agency Executive Director to enter into said Agreements for the potential refunding of the Series 2003A TABs, subject to the Oversight Board's approval of said Agreements as required by the Dissolution Act or desired by the Successor Agency Executive Director.

The Professional Services Agreements between the Successor Agency and First Southwest Company and Jones Hall, respectively, are now presented to the Oversight Board for approval.

#### **DISCUSSION:**

In order for the Successor Agency to issue or cause the issuance of the Refunding Bonds, and pursuant to the proposed Resolution No. OB-13-19 and Resolution No. OB-13-19, the Oversight Board would authorize and direct the Successor Agency to retain the services of First Southwest Company for financial advisory services and the services of Jones Hall for both bond and disclosure services, by approving the Professional Services Agreements with First Southwest Company and Jones Hall, respectively. Both consultants would be part of the

financing team that will be involved in the Refunding Bonds transaction. The following parties are proposed to serve as members of the financing team for the Refunding Bonds:

1. Bond Counsel – Jones Hall
  - a) The law firm retained to provide a legal opinion confirming that the issuer is authorized to issue proposed securities, the issuer has met all legal requirements necessary for issuance, and interest on the proposed securities will be exempt from federal income taxation and, where applicable, from state and local taxation.
  - b) Prepares, or reviews and advises the issuer regarding, authorizing resolutions, ordinances, trust indentures, official statements, validation proceedings and litigation.
2. Disclosure Counsel – Jones Hall
  - a) The law firm retained to prepare the Official Statement, the Bond Purchase Contract, the Continuing Disclosure Agreement, and any Blue Sky Memoranda.
  - b) The Official Statement is the primary and official source of material information about the issuer and the securities in the transaction.
3. Fiscal Consultant (consultant to be determined)
  - a) The firm retained to prepare a report on the economic feasibility of the Project Areas providing the security of the debt issue.
  - b) The views of the feasibility consultant are taken into account by the credit rating agencies, underwriters and investors in the process of marketing the bonds.
4. Financial Advisor, First Southwest Company:
  - a) A professional consultant retained to advise and assist the issuer in formulating and/or executing a debt financing plan to accomplish the public purposes chosen by the issuer. Advises the issuer on matters pertinent to the debt issue, such as structure, timing, marketing, credit enhancements, fairness of pricing, terms, and credit ratings.
  - b) Serve issuer in a "fiduciary capacity", representing the issuer's interests in negotiations with underwriters, rating agencies, banks and other parties.
  - c) Financial advisory firms are required to register with the Securities and Exchange Commission (SEC) and with the Municipal Securities Rulemaking Board (MSRB), and are regulated by the MSRB.
5. Wells Fargo Bank, Trustee/Escrow Agent
  - a) A commercial bank or trust company retained to perform administrative duties relating to a bond issue, such as establishing and holding bond funds and accounts, disbursing bond proceeds for authorized purposes, paying principal and interest to bondholders, and executing investments.

A sixth financing team member, Underwriter or Investment Banker, will be selected through a request for qualifications/proposal process later in the financing process. The Underwriter or Investment Banker would meet the following requirements:

- a) A dealer which purchases from the issuer a new issue of municipal securities for resale to investors; has an "arm's-length relationship" with the issuer.
- b) Investment banking or underwriting firms are required to register with the SEC and with the MSRB, and follow the rules set out by both the SEC and the MSRB.

First Southwest Company (Financial Advisor), Jones Hall (Bond and Disclosure Counsel), and the additional financing team members listed above would provide professional services to the Successor Agency. Costs for said professional services would primarily be funded with the proceeds through the issuance of the Refunding Bonds with one exception described below. As is typical in municipal bond financing, the professional services costs of the financing team members, with the exception of the costs discussed below, are only paid if the bond deal is successfully completed, or closed. In other words, payment of the costs of issuance is generally made on a contingency basis. The Successor Agency's and the Oversight Board's approval of the costs of issuance will be proposed as part of their respective resolutions that will authorize the issuance of the Refunding Bonds and approve the bond documents, which Successor Agency staff will present to the Successor Agency, Oversight Board and City Council at a future date. All contingent costs of issuance would be a part of the financing documents submitted to the DOF for review and considered enforceable obligations of the Successor Agency, and would be deducted from the proceeds of the Refunding Bonds. The approval by the Successor Agency and the Oversight Board of the bond documents and the contingent costs of issuance contained within said documents, and the DOF if review is requested, would constitute approval of the costs of issuance as enforceable obligations of the Successor Agency and would likely not be required to be included on the ROPS 13-14B. However, if required by the DOF, these costs of issuance would be included on the ROPS 13-14B for approval.

There is one exception, however, to the financing team members' rendering their services on a contingency basis. This exception pertains to a portion of the total professional services fees and expenses of First Southwest Company (the Financial Advisor) in an amount not-to-exceed \$19,000 that would not be paid from proceeds of the Refunding Bonds if the bond deal is not completed, but rather would be an obligation of the Successor Agency and paid by the Successor Agency as non-contingent costs. Because completion of the potential bond issue is subject to approval by the Oversight Board and potential approval by the DOF if review is requested, and is a unique and particularly complex bond issue given the recent dissolution of redevelopment agencies, First Southwest Company has proposed that, if the Refunding Bonds are not issued by February 28, 2014, accrued compensation and any accrued expenses not-to-exceed \$19,000 will be due and payable by the Successor Agency. This not-to-exceed \$19,000 is part of the total not-to-exceed \$50,000 proposed by First Southwest Company for its financial advisory services pursuant to the Professional Services Agreement. If the Series 2003A TABs refinancing/refunding and the Refunding Bonds do not close by February 28, 2014, the not-to-exceed \$19,000 non-contingent portion of the financial advisory fees and accrued costs would be paid by the Successor Agency and will be included in the ROPS 13-14B for approval as a proposed enforceable obligation of the Successor Agency. If the Refunding Bonds are issued by February 28, 2014, then the entire not-to-exceed \$50,000 (which includes the \$19,000 non-contingent portion) would be funded with proceeds from the issuance of the Refunding Bonds.

The non-contingent portion of First Southwest Company's (Financial Advisor) compensation pursuant to the Professional Services Agreement is \$4,000 above the \$15,000 threshold requirement to perform a formal competitive bid process for the procurement of professional services. Imperial Beach 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). Consistent with this authority provided to the City Council and based on the unique nature of the services to be rendered, the complexity of the proposed refinancing transaction, and the necessity and convenience for the management of the Successor Agency's affairs, the

Successor Agency waived any applicable formal bid requirements for the selection of First Southwest Company and authorized the Successor Agency Executive Director to enter into the Professional Services Agreement with First Southwest Company under the terms discussed above. As mentioned above, the not-to-exceed \$19,000 non-contingent portion of First Southwest Company's (Financial Advisor) compensation pursuant to the Professional Services Agreement would only be due and payable by the Successor Agency if the Series 2003A TABs are not refinanced by February 28, 2014. As with Jones Hall, if the Series 2003A TABs are refinanced by February 28, 2014, the entire cost for financial advisory professional services of First Southwest Company not-to-exceed \$50,000 would be considered a "cost of issuance" and paid from the proceeds of Refunding Bonds.

In connection with the legal and professional services of Jones Hall pursuant to the Professional Services Agreement, Jones Hall shall be compensated for work completed in an amount not-to-exceed \$88,706 for basic services rendered and not to exceed \$2,500 for all accrued out-of-pocket expenses. As mentioned above, payment to Jones Hall for all compensation and accrued expenses will be made by the Successor Agency on a contingency basis dependent on the final sale and close of the Refunding Bonds and from the proceeds of the Refunding Bonds.

**ENVIRONMENTAL DETERMINATION:**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

The not-to-exceed \$19,000 non-contingent portion of First Southwest Company's (Financial Advisor) compensation pursuant to the Professional Services Agreement would only be due and payable from the Successor Agency if the Series 2003A TABs are not refinanced by February 28, 2014. If the Series 2003A TABs are refinanced by February 28, 2014, the entire cost for financial advisory professional services of First Southwest Company not-to-exceed \$50,000 and the entire cost for bond and disclosure counsel legal and professional services of Jones Hall not-to-exceed \$88,706 for basic services and not to exceed \$2,500 for accrued out-of-pocket expenses would be considered costs of issuance and paid from the proceeds of Refunding Bonds.

**DIRECTOR'S RECOMMENDATION:**

Successor Agency staff recommends that the Oversight Board (1) adopt Resolution No. OB-13-19 approving the Professional Services Agreement (Attachment No. 2) between the Successor Agency and First Southwest Company and authorizing and directing the Successor Agency Executive Director to enter into said Agreement for financial advisory professional services; and (2) adopt Resolution No. OB-13-20 approving the Professional Services Agreement (Attachment No. 5) between the Successor Agency and Jones Hall and authorizing and directing the Successor Agency Executive Director to enter into said Agreement for both bond and disclosure counsel legal and professional services. All of these services would include developing a financing plan for the refunding, selecting financing team members, and proceeding with preparation of bond documents and the preliminary official statement for future authorization by the Successor Agency, Oversight Board, the DOF if review requested, as well as the City.

In addition, and as part of Resolution No. OB-13-19 in connection with the Professional Services Agreement with First Southwest Company, Successor Agency staff recommends that the

Oversight Board agree that if the Series 2003 TABs refunding is not completed by February 28, 2014, then accrued compensation and expenses not-to-exceed \$19,000 will be paid to First Southwest Company and that the Successor Agency seek payment or reimbursement of this cost as an enforceable obligation of the Successor Agency as part of its ROPS 13-14B.

Attachments:

1. Resolution No. OB-13-19
2. Professional Services Agreement with First Southwest Company
3. First Southwest Company Proposal and Engagement Letter
4. Resolution No. OB-13-20
5. Professional Services Agreement with Jones Hall
6. Jones Hall Proposal

RESOLUTION NO. OB-13-19

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND AUTHORIZING AND DIRECTING THE SUCCESSOR AGENCY EXECUTIVE DIRECTOR TO EXECUTE, A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND FIRST SOUTHWEST COMPANY FOR FINANCIAL ADVISORY SERVICES FOR 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 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 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 12, 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 Dissolution Act, and specifically HSC Section 34177.5(f) of the Dissolution Act, the Oversight Board may direct the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs, among other actions authorized by HSC Section 34177.5(a) of the Dissolution Act, for debt service savings so long as the Successor Agency is able to recover its related costs in connection with the transaction; and

**WHEREAS**, prior to the Oversight Board's consideration of this Resolution but at the same meeting of the Oversight Board, the Oversight Board will have considered directing the Successor Agency to commence with the refinancing or refunding of the Series 2003A TABs for debt service savings pursuant to HSC Section 34177.5 of the Dissolution Act and authorizing the Successor Agency to recover its costs therefor; and

**WHEREAS**, upon the direction of the Oversight Board, 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**, pursuant to HSC Section 34177.5(h) of the Dissolution Act, the Successor Agency shall make use of an independent financial advisor in developing financing proposals and shall make the work products of the financial advisor available to the DOF at its request; and

**WHEREAS**, in furtherance of HSC Section 34177.5(h) of the Dissolution Act, and in anticipation of the Oversight Board's direction pursuant to HSC Section 34177.5(f) of the Dissolution Act that the Successor Agency commence the refinancing or refunding of the Series 2013A TABs for debt service savings, the Successor Agency, at its meeting held on June 5, 2013, adopted Resolution No. SA-13-24, thereby approving the Professional Services Agreement with First Southwest Company, and authorizing the Successor Agency Executive Director to enter into said Agreement for the potential refunding of the Series 2003A TABs, subject to the Oversight Board's approval of said Agreement as required by the Dissolution Act or desired by the Successor Agency Executive Director; and

**WHEREAS**, the Professional Services Agreement between the Successor Agency and First Southwest Company is now presented to the Oversight Board for approval; and

**WHEREAS**, in order for the Successor Agency to issue or cause the issuance of the Refunding Bonds, and pursuant to this Resolution, the Oversight Board would authorize and direct the Successor Agency to retain the services of First Southwest Company for financial advisory services, by approving the Professional Services Agreement with First Southwest Company. First Southwest Company would be part of the financing team that will be involved in the Refunding Bonds transaction; and

**WHEREAS**, pursuant to the Professional Services Agreement, First Southwest Company would provide to the Successor Agency debt financial advisory services, including without limitation the following: to advise and assist in formulating and/or executing a debt financing plan to accomplish the public purposes of the issuer such as minimizing the Successor Agency's total interest costs on outstanding debt; to advise on matters pertinent to the refunding of its Series 2003A TABs such as debt structure, marketing, timing, credit enhancements, fairness of pricing, terms and credit ratings; and to serve the issuer in a fiduciary capacity representing the issuer's interests in negotiations with underwriters, rating agencies, banks, and other parties; and

**WHEREAS**, First Southwest Company is a debt financial advisory firm registered with the Securities and Exchange Commission (SEC) and with the Municipal Securities Rulemaking Board (MSRB) and has represented that it possesses the necessary qualifications to provide the services required by the Successor Agency; and

**WHEREAS**, the Successor Agency has authorized the Professional Services Agreement for the retention of the services of First Southwest Company as "Financial Advisor" to the Successor Agency and recommends the Oversight Board's approval relating to same; and

**WHEREAS**, pursuant to the Professional Services Agreement, and subject to the below, First Southwest Company shall be compensated for work completed, not-to-exceed \$50,000 for basic services rendered under the Agreement and all accrued expenses. First Southwest Company will be compensated for additional services only upon prior written approval of the Successor Agency. According to the Agreement, if the Refunding Bonds are issued prior to March 1, 2014, payment to First Southwest Company for compensation and accrued expenses not-to-exceed \$50,000 (which includes the \$19,000 non-contingent portion) will be made by the Successor Agency on a contingency basis dependent on the final sale and close of the Refunding Bonds through the Trustee/Escrow Agent from the proceeds of the Refunding Bonds within thirty (30) calendar days of receipt of invoice. However, in the unlikely event that the Refunding Bonds are not issued before March 1, 2014, payment to First Southwest Company for compensation and accrued expenses not-to-exceed \$19,000 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 will be included in the ROPS 13-14B for

approval as a proposed enforceable obligation of the Successor Agency; 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 foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board hereby approves the Professional Services Agreement ("Agreement") between the Successor Agency and First Southwest Company in substantial form as the Agreement attached as Exhibit "A", for financial advisory services relating to the Series 2003A TABs and the Refunding Bonds, and compensation for services and accrued expenses in a total amount (i) not-to-exceed \$50,000 if the Refunding Bonds are issued prior to March 1, 2014, payment to First Southwest Company 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 \$19,000 if the Refunding Bonds are not issued before March 1, 2014, payment to First Southwest Company 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 (and the Successor Agency may seek payment or reimbursement of this cost as an enforceable obligation of the Successor Agency as part of its ROPS 13-14B).
- Section 3.** 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", upon the effectiveness of the Oversight Board's actions approved by this Resolution pursuant to the Dissolution Act.
- Section 4.** 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 Successor Agency Executive Director 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 Oversight Board.
- Section 5.** 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 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 6.** 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 its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

**Section 7.** This Resolution shall take effect upon the date of its adoption.

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 12<sup>th</sup> day of June 2013, by the following vote:

<b>AYES:</b>	<b>BOARD MEMBERS:</b>
<b>NOES:</b>	<b>BOARD MEMBERS:</b>
<b>ABSENT:</b>	<b>BOARD MEMBERS:</b>

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**MAYDA WINTER**  
**CHAIRPERSON**

**ATTEST:**

*/s/*  
\_\_\_\_\_  
**JACQUELINE M. HALD, MMC**  
**SUCCESSOR AGENCY SECRETARY**



**EXHIBIT "A"**  
Imperial Beach Redevelopment Agency Successor Agency  
**AGREEMENT FOR PROFESSIONAL SERVICES**

**FOR FINANCIAL ADVISORY SERVICES RELATED TO THE  
POSSIBLE REFUNDING OF THE 2003A TAX ALLOCATION BONDS**

This Agreement, entered into this 6<sup>th</sup> day of June, 2013, by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity (hereinafter referred to as "AGENCY"), and FIRST SOUTHWEST COMPANY, a California \_\_\_\_\_ (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 financial advisor to advise and assist in formulating and/or executing a debt financing plan to accomplish the goal of minimizing the AGENCY's total interest costs on outstanding debt; and

WHEREAS, AGENCY desires to retain a debt financial advisor to advise on matters pertinent to the refinancing of its Series 2003A Tax Allocation Bonds, such as debt structure, marketing and sale timing, credit enhancement and credit ratings; and

WHEREAS, AGENCY desires to retain a debt financial advisor to advise on the fairness of pricing related to the cost of issuance of the refinancing team members, including the underwriter and/or investment banker; and

WHEREAS, CONSULTANT is a debt financial advisory firm registered with the Securities and Exchange Commission (SEC) and with the Municipal Securities Rulemaking Board (MSRB) and has represented that CONSULTANT possesses the necessary qualifications to provide such services; 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 & Engagement Letter", 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, not to exceed **\$50,000** for basic services rendered under this Section 2 and all accrued expenses, as more particularly described in Exhibit A. CONSULTANT shall be compensated for additional services only upon prior written approval of AGENCY.
- E. 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 **\$19,000**, after February 28, 2014 if the 2013 Tax Allocation Bonds are not issued before March 1, 2014. 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. 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 **\$50,000**, if the 2013 Tax Allocation Bonds are issued prior to March 1, 2014. Payments to CONSULTANT will be made by AGENCY thru 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.

Michael Kremer, Senior Vice 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, Workers' Compensation and 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 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

Michael Kremer  
Sr. Vice President  
First Southwest Company  
1620 26<sup>th</sup> Street, Ste. 230 South  
Santa Monica, CA 90404

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: **Request for Qualifications/Proposal and Proposal dated March 21, 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

CONSULTANT:

FIRST SOUTHWEST COMPANY,  
a California \_\_\_\_\_

\_\_\_\_\_  
Gary Brown, Executive Director

\_\_\_\_\_  
Michael Kremer, Sr. Vice President

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kathleen VonAchen, Treasurer/  
Administrative Services Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer M. Lyon, General Counsel



1620 26th Street  
Suite 230 South  
Santa Monica, CA 90404

310.401.8052 Direct  
310.722.2615 Cell  
310.401.8055 Fax

**Michael Kremer**  
Senior Vice President

michael.kremer@firstsw.com

March 21, 2013

Ms. Kathleen VonAchen  
Administrative Services Director  
City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932

Dear Kathleen:

On behalf of First Southwest Company ("FirstSouthwest"), we appreciate the opportunity to provide financial advisory services to the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") for its anticipated negotiated, public sale of approximately \$18 million of Property Tax Revenue Refunding Bonds, Series 2013 (the "Refunding Bonds") for the purpose of refunding the Series 2003A Tax Allocation Bonds (the "2003A TABs").

### **Background**

The proceeds of the Successor Agency's Refunding Bonds are expected to fund a 30-day escrow to currently refund the \$17.965 million of principal outstanding on the 2003A TABs, fund a deposit to the debt service reserve fund and pay all financing costs. The Refunding Bonds are currently scheduled to close in September 2013, following required authorizations by the Successor Agency, Oversight Board and State Department of Finance.

Based on interest rates as of March 8, 2013 and the assignment of an underlying "A" rating to the Refunding Bonds by Standard & Poor's, the savings from refunding the 2003A TABs are projected at \$310,000 annually from fiscal year 2014-2033, aggregating to \$6.2 million, and equivalent to net present value savings of \$4.30 million (23.9% of refunded par).

### **Scope of Services**

The items on the following page comprise the scope of services proposed for this engagement (collectively, the "Scope of Services"). The total estimated cost is \$51,750 based on 230 hours at \$225 per hour.

	<b>Service Provided</b>	<b>Estimated Time (hrs)</b>	<b>Estimated Cost</b>
1)	Review the relevant financing documents from the 2003A and 2010 TABs transactions, the Successor Agency's Recognized Obligation Payment Schedules (ROPS) and other correspondence by and between the Oversight Board and the Dept. of Finance.	10	\$2,250
2)	Develop a financing plan for the Refunding Bonds, considering the procedures, timelines, and necessary authorizations of the Oversight Board, Dept. of Finance and other stakeholders.	20	\$4,500
3)	Reflecting assumptions relating to assumed credit ratings and current market conditions, prepare and periodically update bond sizings for the Refunding Bonds, showing projected annual, total and net present value savings.	10	\$2,250
4)	Prepare and maintain the financing schedule and working group list.	5	\$1,125
5)	Provide updates to the Successor Agency and the working group on the status of the financing, and coordinate and participate on all working group meetings/conference calls.	15	\$3,375
6)	Attend meetings and make presentations at the request of the Successor Agency.	20	\$4,500
7)	Work with the fiscal consultant to produce historical and projected annual financial results of the RPTTF for use in calculating debt service coverage for the Refunding Bonds and other obligations. Confirm Successor Agency compliance with relevant bond covenants.	10	\$2,250
8)	Develop strategies for optimizing credit ratings and maximizing opportunities for cost-effective credit enhancement, including preparing credit presentations.	40	\$9,000
9)	Review and comment on financing documents and reports prepared for the Refunding Bonds.	25	\$5,625
10)	Prepare and distribute the RFP for Investment Banking Services, review RFP responses, manage the oral interview process and advise on selection.	30	\$6,750
11)	Assist in negotiating all terms of a negotiated public sale, including interest rate levels, underwriter's compensation, redemption features and syndicate policies.	10	\$2,250
12)	Secure competitive bids or quotes for financing team members such as verification agents and financial printers, as requested by the SA.	5	\$1,125
13)	Provide general market updates and information from comparable transactions.	10	\$2,250
14)	Facilitate the investment of bond proceeds, as necessary.	5	\$1,125
15)	Coordinate the closing of the Refunding Bonds.	5	\$1,125
16)	Miscellaneous	10	\$2,250
	<b>TOTAL</b>	<b>230</b>	<b>\$51,750</b>

### Compensation and Duration

In consideration for providing the Scope of Services, FirstSouthwest proposes to charge a blended hourly rate of \$225 for all professional staff time (no charge for administrative staff time). Our total compensation would be subject to a not-to-exceed amount of \$50,000, with payment of accrued compensation to be from the proceeds of the Refunding Bonds. However, if the Refunding Bonds are

not issued by February 28, 2014, FirstSouthwest's accrued compensation will be due and payable, subject to a not-to-exceed amount of \$19,000, from available funds of the Successor Agency.

The Successor Agency's payment of FirstSouthwest's accrued expenses will be limited to conference calls and travel undertaken at the request of the Successor Agency, and will not be subject to any dollar amount limitation nor be contingent upon the issuance of the Refunding Bonds.

This engagement shall begin upon your written acceptance below and shall remain in effect until (i) the issuance of the Refunding Bonds or (ii) the engagement is terminated by either party upon giving of at least thirty (30) days' prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. In the event of such termination, it is understood and agreed that only the compensation and expenses incurred to the date of termination will be due and payable.

**Miscellaneous**

The Successor Agency and FirstSouthwest acknowledge and agree that:

- In any event regardless of the cause of action, FirstSouthwest's total liability (including loss and expense) to the Successor Agency in the aggregate shall not exceed the gross amount of compensation received by FirstSouthwest pursuant to this letter agreement. The limitations of liability set forth in this letter agreement are fundamental elements of the basis of the bargain between FirstSouthwest and the Successor Agency, and the pricing of the services set forth above reflect such limitations.
- This letter agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be fully performed therein.

Please acknowledge acceptance of these terms by signing in the space provided below and returning two copies to me.

Sincerely,

Signature on File



By: \_\_\_\_\_

Michael D. Kremer  
Senior Vice President

**Agreed and Accepted:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO. OB-13-20

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND AUTHORIZING AND DIRECTING THE SUCCESSOR AGENCY EXECUTIVE DIRECTOR TO EXECUTE, A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND JONES HALL FOR BOTH BOND AND DISCLOSURE COUNSEL 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 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 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 12, 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, and specifically HSC Section 34177.5(f) of the Dissolution Act, the Oversight Board may direct the Successor Agency to commence the refinancing or refunding of the Series 2003A TABs, among other actions authorized by HSC Section 34177.5(a) of the Dissolution Act, for debt service savings so long as the Successor Agency is able to recover its related costs in connection with the transaction; and

**WHEREAS**, prior to the Oversight Board's consideration of this Resolution but at the same meeting of the Oversight Board, the Oversight Board will have considered directing the Successor Agency to commence with the refinancing or refunding of the Series 2003A TABs for debt service savings pursuant to HSC Section 34177.5 of the Dissolution Act and authorizing the Successor Agency to recover its costs therefor; and

**WHEREAS**, upon the direction of the Oversight Board, 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**, pursuant to HSC Section 34177.5(h) of the Dissolution Act, the Successor Agency shall make use of an independent financial advisor in developing financing proposals and shall make the work products of the financial advisor available to the DOF at its request; and

**WHEREAS**, in furtherance of HSC Section 34177.5(h) of the Dissolution Act, and in anticipation of the Oversight Board's direction pursuant to HSC Section 34177.5(f) of the Dissolution Act that the Successor Agency commence the refinancing or refunding of the Series 2013A TABs for debt service savings, the Successor Agency, at its meeting held on June 5, 2013, adopted Resolution No. SA-13-24, thereby approving the Professional Services Agreement with Jones Hall, and authorizing the Successor Agency Executive Director to enter into said Agreement for the potential refunding of the Series 2003A TABs, subject to the Oversight Board's approval of said Agreement as required by the Dissolution Act or desired by the Successor Agency Executive Director; and

**WHEREAS**, the Professional Services Agreement between the Successor Agency and Jones Hall is now presented to the Oversight Board for approval; and

**WHEREAS**, in order for the Successor Agency to issue or cause the issuance of the Refunding Bonds, and pursuant to this Resolution, the Oversight Board would authorize and direct the Successor Agency to retain the services of Jones Hall for both bond counsel and disclosure counsel advisory services, by approving the Professional Services Agreement with Jones Hall. Jones Hall would be part of the financing team that will be involved in the Refunding Bonds transaction; and

**WHEREAS**, pursuant to the Professional Services Agreement, Jones Hall would provide to the Successor Agency both bond counsel and disclosure counsel advisory services, including without limitation the following: to provide a legal opinion confirming that the issuer is authorized to issue proposed securities, the issuer has met all legal requirements necessary for issuance, and interest on the proposed securities will be exempt from federal income taxation and, where applicable, from state and local taxation; to prepare, or review and advise the issuer regarding, authorizing resolutions, ordinances, trust indentures, official statements, validation proceedings and litigation; and to prepare the Official Statement, the Bond Purchase Contract, the Continuing Disclosure Agreement, and any Blue Sky Memoranda in connection with the Refunding Bonds; and

**WHEREAS**, Jones Hall has represented that it possesses the necessary qualifications to provide the services required by the Successor Agency; and

**WHEREAS**, the Successor Agency has authorized the Professional Services Agreement for the retention of the services of Jones Hall as "Bond Counsel" and "Disclosure Counsel" to the Successor Agency and recommends the Oversight Board's approval relating to same; and

**WHEREAS**, pursuant to the Professional Services Agreement, subject to the below, Jones Hall shall be compensated for work completed, not to exceed \$88,706 for basic services rendered under the Agreement and not to exceed \$2,500 for all accrued out-of-pocket expenses. Jones Hall would be compensated for additional services only upon prior written approval of the Successor Agency. According to the Agreement, payment to Jones Hall for all compensation not to exceed \$88,706 and accrued expenses not to exceed \$2,500 will be made by the Successor Agency on a contingency basis dependent on the final sale and close of the Refunding Bonds through the Trustee/Escrow Agent from the proceeds of the Refunding Bonds within thirty (30) calendar days of receipt of invoice; 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 foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board hereby approves the Professional Services Agreement (“Agreement”) between the Successor Agency and Jones Hall in substantial form as the Agreement attached as Exhibit “A”, for both bond counsel and disclosure counsel services relating to the Series 2003A TABs and the Refunding Bonds, and compensation for services and accrued expenses in a total amount not-to-exceed \$88,706 for basic services rendered under the Agreement and not to exceed \$2,500 for accrued out-of-pocket expenses, payment to Jones Hall will be made by the Successor Agency on a contingency basis dependent on the final sale and close of the Refunding Bonds through the Trustee/Escrow Agent from the proceeds of the Refunding Bonds.
- Section 3.** 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”, upon the effectiveness of the Oversight Board’s actions approved by this Resolution pursuant to the Dissolution Act.
- Section 4.** 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 Successor Agency Executive Director 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 Oversight Board.
- Section 5.** 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 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 6.** 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 its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 7.** This Resolution shall take effect upon the date of its adoption.

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 12<sup>th</sup> day of June 2013, by the following vote:

**AYES:           BOARD MEMBERS:**  
**NOES:           BOARD MEMBERS:**  
**ABSENT:        BOARD MEMBERS:**

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**MAYDA WINTER**  
**CHAIRPERSON**

**ATTEST:**

*/s/*  
\_\_\_\_\_  
**JACQUELINE M. HALD, MMC**  
**SUCCESSOR AGENCY SECRETARY**



**EXHIBIT "B"**  
Imperial Beach Redevelopment Agency Successor Agency  
**AGREEMENT FOR PROFESSIONAL SERVICES**

**FOR BOND COUNSEL AND DISCLOSURE COUNSEL SERVICES RELATED TO THE  
POSSIBLE REFUNDING OF THE 2003A TAX ALLOCATION BONDS**

This Agreement, entered into this 6<sup>th</sup> day of June, 2013, by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity (hereinafter referred to as "AGENCY"), and JONES HALL, a California professional law corporation (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 bond counsel and disclosure counsel to provide a legal opinion confirming that the AGENCY is authorized to issue proposed securities and has met all legal requirements necessary for issuance and that interest on the proposed securities will be exempt from federal income taxation and, where applicable, from state and local taxation; and

WHEREAS, AGENCY desires to retain bond counsel and disclosure counsel to prepare and advise the AGENCY regarding authorizing resolutions, ordinances, trust indentures, official statements, validation proceedings and litigation; and

WHEREAS, AGENCY desires to retain bond counsel and disclosure counsel to prepare the Official Statement, the Bond Purchase Contract (or the Official Notice of Sale for a competitive sale), the Continuing Disclosure Agreement and any Blue Sky Memoranda; and

WHEREAS, the Official Statement is the primary and official source of material information about the AGENCY and the securities in the transaction is an integral part of a successful bond issuance process; and

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

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 & Engagement Letter", 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, not to exceed **\$88,706** for basic bond and disclosure counsel services rendered under this Section 2 and **\$2,500** for out-of-pocket expenses, both of which as more particularly described in Exhibit A. CONSULTANT shall be compensated for additional services only upon prior written approval of AGENCY.
- E. CONSULTANT shall submit a statement for total accrued compensation for basic and additional services rendered in accordance with this Agreement and all accrued expenses. Payments to CONSULTANT for all compensation and accrued expenses will be made by AGENCY on a contingency basis dependent on the final sale and close of the 2013 Tax Allocation Bonds thru the Trustee/Escrow Agent 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.

David T. Fama, principal attorney for 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, Workers' Compensation and 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 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

David T. Fama  
Attorney at Law  
Jones Hall, A Professional Law Corp.  
650 California Street, 18<sup>th</sup> Floor  
San Francisco, CA 94108

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: **Bond/Disclosure Counsel Proposal dated May 28, 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

CONSULTANT:

JONES HALL,  
a California professional law corporation

\_\_\_\_\_  
Gary Brown, Executive Director

\_\_\_\_\_  
David T. Fama, Principal Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Kathleen VonAchen, Treasurer/  
Administrative Services Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer M. Lyon, City Attorney

**Proposal for  
BOND/DISCLOSURE COUNSEL**

presented to the

**IMPERIAL BEACH SUCCESSOR AGENCY**

presented by

**JONES HALL  
A PROFESSIONAL LAW CORPORATION**

**May 28, 2013**

Submitted by: Jones Hall, A Professional Law Corporation  
Contact Persons: David Fama  
Business Address: 650 California Street, 18<sup>th</sup> Floor  
San Francisco, California 94108  
(415) 391-5780  
[dfama@joneshall.com](mailto:dfama@joneshall.com)

## 1. Some Basic Facts

**Type of Practice:** Law, Exclusively Municipal Bonds. The firm is qualified to serve both as bond counsel and disclosure counsel and has in-house tax capabilities.

**Total number of attorney principals:** 11

**Total number of associates:** 4

## 2. Qualifications of the Firm

Jones Hall was established in 1978 and has been in business as a "municipal bond only" firm since that time, meaning it is a firm of bond specialists, it has no other practice areas. Given that municipal bonds is its only practice area, it has extensive experience as summarized below, which makes it well qualified for your undertaking.

Jones Hall is structured so as to provide the highest quality bond counsel services in the most effective and efficient manner possible and our over 30-year reputation confirms it. We believe that as a result of our unique attributes, our clients are provided with experienced senior attorneys and significant advantages that are not equally obtainable elsewhere.

The firm is well known in the bond industry in California and is listed in the directory of municipal bond attorneys in *The Bond Buyer's Municipal Marketplace*. The firm only represents governmental issuers in the State of California.

Jones Hall is a firm specializing in municipal finance, its sole practice area, and is one of the most active municipal finance firms in the country. During the past fifteen years, more local California agencies have used Jones Hall as bond counsel on their long-term financings than any other law firm, based upon statistics compiled by the California Debt Investment and Advisory Commission.

For several recent years, Jones Hall was the second-ranked bond counsel firm, the top ranked disclosure counsel firm in terms of number of issues, according to Thomson Reuters Financial. During the period from January 1, 2002 through December 31, 2011, Jones Hall served as bond counsel on over 1750 California bond issues, and as disclosure counsel on over 1100 California bond issues. During calendar years 2009 through 2011, based on data prepared by Thomson Reuters, Jones Hall participated as bond counsel on approximately 404 municipal financings in California (totaling approximately \$7.95 billion in principal amount), as disclosure counsel on approximately 370 financings (totaling approximately \$8.05 billion in principal amount) and as underwriter's counsel on approximately 74 financings (totaling approximately \$2.02 billion in principal amount). In addition, over the past five years, Jones Hall served as disclosure counsel on more transactions than any other law firm in the country.

We represent virtually every type of public agency in California, principally including cities, special districts, counties, school districts, and redevelopment agencies (now successor agencies), having served as bond counsel for over 1,200 public entities in the State of California. The depth and breadth of the experience of the firm's attorneys enables us to bring a level of knowledge and creativity to the structuring of financing transactions that is far greater than that of most bond counsel firms.

Federal Tax Matters. Jones Hall has great experience in the federal tax aspects of municipal finance. The firm's tax partner, David Walton, was the attorney advisor on tax-exempt bonds for the United States Treasury Department prior to joining the firm. During his two years with Treasury, Mr. Walton played a key role in revising reimbursement rules and in the allocation and accounting provisions, and has been widely praised by the industry for helping to make tax-exempt bond rules simpler and more workable.

### **3. Assigned Professionals.**

Jones Hall consists of 11 partner attorneys and 4 associate attorneys. Our work style is that all assignments are handled directly by a partner. While all partner level attorneys have expertise in revenue bonds and certificates of participation, the day to day responsibility for the assignment, will be with David Fama. Steve Melikian will be available to provide back-up services, if needed. David Walton is the tax specialist for the firm and will assist with the tax-exemption legal considerations.

*David T. Fama.* Mr. Fama is a principal attorney in the firm and has over 20 years of municipal bond experience and joined Jones Hall in 2000. He has experience in all types of municipal financings, both as bond counsel and disclosure/underwriter's counsel. He currently serves as bond counsel or disclosure counsel to numerous cities and special Agencies. Mr. Fama attended Santa Clara University and Pepperdine University Law School. He was admitted to the California Bar in 1979 and is a member of the American Bar Association and the National Association of Bond Lawyers.

*Andy Hall.* Andy Hall is a graduate of the University of Michigan and of its Law School. Mr. Hall was admitted to the California Bar in 1963 and has almost 50 years of experience as a municipal bond counsel. During his career, Mr. Hall has had extensive experience in serving as bond counsel and disclosure counsel in the issuance of tax allocation bonds. During the five years prior to the dissolution of redevelopment agencies, Mr. Hall served as bond counsel or disclosure counsel with respect to over 50 issues of tax allocation bonds. In recognition of his extensive experience, the California Redevelopment Association in 2011 presented to Mr. Hall its "Lifetime Achievement in Redevelopment Award".

*David Walton (Tax Specialty).* Mr. Walton joined Jones Hall in 1992 and practices in the tax area exclusively. From 1989 to June of 1990, he was Counsel to the Assistant Chief Counsel (Technical) - Financial Institutions and Products at the Internal Revenue Service; and for two years thereafter served as an Attorney-Advisor in the Office of Tax Policy at the United States Department of Treasury where he specialized in tax-exempt finance. Mr. Walton attended Brigham Young University, where he received a B.S. degree in 1980, and Hastings College of the Law, where he received his J.D. degree in 1983. He was admitted to the Utah Bar in 1983 and the California Bar in 1990. He is chair of the National Association of Bond Lawyers Committee on Arbitrage and Rebate, a member of the Committee on Tax-Exempt Finance of the American Bar Association, and a member of the Editorial Advisory board of the Public Finance Advisor.

Others in the firm can be available as and if needed. If selected, we do not currently expect to utilize associate attorney staff on this assignment, however associate attorneys are available to be involved from time to time- but note that our work is never "handed over" to an associate for unsupervised or minimally-supervised handling. Most, if not all, of the Agency's interface will be with a principal attorney. To assure your financing would be accomplished by an attorney which is representative of the firm's broad experience, our associate attorneys used primarily on an internal basis only. Many larger firms use partner-level attorneys to bring business in, then the actual work is done by an associate rather than by the more experienced partner which the client assumed would be performing the work; we do not do that.

*Closers.* Our closing coordinators assist our attorneys in all closing activities, and greatly alleviate the logistical and structural issues which is often a part of bond closings. The only task of the Closing Department is to create and gather closing documents and provide assistance to assure smooth closings and timely response to closing concerns by assisting the attorneys in all pre-closing, closing and post-closing logistics. Each closer has a minimum of 10 years experience at the sole responsibility of closing municipal bond financings. Given the high volume of bond transactions we handle, we are particularly proud to offer this closing expertise, especially now that many of our rivals are attempting to emulate us by developing their own closing departments. As the transaction approaches a closing, we will assign one of the professionals from our Closing Department to take charge of the logistics of completing your financing.

#### **4. Dissolution of Redevelopment Agencies.**

Jones Hall, prior to the passage of ABx1 26, was the most active bond counsel firm in the State with respect to tax allocation bonds. In addition to representing, as bond counsel, several of the largest issuer of tax allocation bonds, including the Redevelopment Agency of the City of San Jose, the Redevelopment Agency of the City and County of San Francisco, the Redevelopment Agency for the County of Riverside, the Redevelopment Agency of the County of Sacramento, and the Redevelopment Agency of the City of Oakland, Jones Hall also represented, as bond counsel, small and medium sized redevelopment agencies, including that of Imperial Beach for the 2010 tax allocation bond issue.

Subsequent to the passage of ABx126, Jones Hall has worked with several clients, including the City of San Jose and the County of Riverside, as well as several smaller agencies, to ensure that certain obligations, which the redevelopment agencies considered to be "enforceable obligations", were properly listed on the Recognized Obligation Payments Schedule ("ROPS") and recognized as "enforceable obligations" by the applicable County and the Department of Finance ("DOF"). For example, after the County of Santa Clara determined that three separate reimbursement agreements between the Town of Los Gatos and the Redevelopment Agency of the Town of Los Gatos supporting lease financings of the Town were not "enforceable obligations", we prepared a memorandum that convinced the County to reverse its decision and to permit the Town, as successor agency, to include the reimbursement agreements on its ROPS. Similarly, after DOF had determined that a similar reimbursement agreement between the Redevelopment Agency of the City of Suisun City and the City of Suisun City was not an "enforceable obligation," we talked with DOF on behalf of the City of Suisun City and were able to persuade DOF to reverse its decision and to treat the reimbursement agreement as an "enforceable obligation."

In addition to working with clients to resolve issues relating to their ROPS, the use of bond proceeds, and other matters arising under ABX1 26, Jones Hall took the lead in drafting the bond provisions included in AB 1484 and in working to convince legislative staff and others in Sacramento that such legislation was needed to allow for the refunding of existing debt for savings. In connection with this effort, we organized a letter writing campaign of California bond counsel firms, and were able to deliver to the DOF, the State Treasurer and others in Sacramento letters from five of the most active bond counsel firms in the State to the effect that, without the addition of Section 34177.5 of the Health and Safety Code, bond counsel firms would not be able to give unqualified opinions on tax allocation bonds post ABx1 26.

Unfortunately, subsequent to our involvement in preparing the early drafts of Section 34177.5 of the Health and Safety Code, language was revised and additional language added that confused some of the issues we were attempting to resolve in our drafting. Accordingly, while we are currently working with several clients on potential refinancings under this section,

we are still addressing these issues, which include the exact nature of the pledge of tax increment, the ability to use low and moderate income tax increment to pay debt service on non-housing bonds, the applicability of tax increment caps and other plan limitations in a post ABx1 26 environment, and the effect of the litigation, including the lawsuit filed by the bond insurer Syncora, challenging the constitutionality of ABx1 26. Based on these issues, Jones Hall may require, in certain instances, a validation action resulting in a favorable judgment in order to be able to render an unqualified opinion with respect to refunding bonds under ABx1 26.

#### **5. Insurance.**

The firm's malpractice coverage is through a policy of Lawyers Professional Liability Insurance issued by Lloyds of London with a \$7.5 million limit of liability. Current proof of insurance is available upon request. The firm has no pending claims or disputes. During the term of the engagement the firm will maintain the professional liability insurance policy covering, among other things, securities and malpractice related claims, in full force and effect.

#### **6. Fee Structure.**

The firm does not bill by the hour and has no schedule of hourly rates. Our fee for each bond issue as bond counsel and/or disclosure counsel is entirely contingent upon a successful bond closing, and is payable at closing.

Bond Counsel. We propose a fee of using the same formula as for the 2010 tax allocation bonds for the Imperial Beach Redevelopment Agency, which was 1% of the par amount for the first \$1 million of par, 1/2% of the next \$4 million, 1/4% of the next \$10 million and 1/8% of the remaining par amount. We contemplate there will be extra steps in this financing due to the Oversight Board and Department of Finance approval process; given our recent experience in this area we no longer feel compelled to charge extra for the necessary advice and expected documentation for those submissions, however our role as bond counsel does not include serving as successor agency counsel- we assume the Agency has its own counsel handling day-to-day legal matters; services of such counsel may be warranted as part of the approval process- for instance, Oversight Board interaction and if a meeting with DOF is required.

Our fee is contingent upon successful closing and payable at closing. We do not charge for travel. We would additionally expect to be reimbursed for actual out-of-pocket expenses associated with the transaction, which in most financings is comprised mainly of the official transcript preparation in paper and/or CD formats, and shipping charges. This would also be contingent. We do not charge for copying, secretarial, internal staff, etc. Our out-of-pocket expenses will be capped at \$2,500.

Disclosure Counsel. We propose a fee of \$30,000 for disclosure counsel services for the financing described in your RFP. This is higher than our 2010 fee and reflects the substantial extra work involved arising out of the dissolution of redevelopment agencies as well as the increased disclosure scrutiny arising out of the Dodd-Frank financial reform legislation. Our fee for serving as disclosure counsel is also contingent upon a successful closing and payable at closing. We will not charge for travel. No out of pocket costs would be charged except for charges, if any, directly billed to the firm by third party vendors (for example if applicable, CalMuni data reports).

Our fees include reasonable and customary follow-up advice regarding the financing and requested by the Agency, so that the Agency can expect to pay only once, at bond closing.

Thank you for the opportunity to present this proposal to the Imperial Beach Successor Agency. Feel free to contact me; I look forward to hearing from you. Contact information is below

David T. Fama  
JONES HALL  
650 California Street, 18<sup>th</sup> Floor  
San Francisco, California 94108  
(415) 391-5780  
fax: (415) 391-5784  
[dfama@joneshall.com](mailto:dfama@joneshall.com)



**STAFF REPORT  
OVERSIGHT BOARD  
TO THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

**TO:** CHAIR AND MEMBERS OF THE OVERSIGHT BOARD TO THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR  
AGENCY

**FROM:** GARY BROWN, EXECUTIVE DIRECTOR  
GREG WADE, DEPUTY DIRECTOR *GW*

**MEETING DATE:** JUNE 12, 2013

**SUBJECT:** ADOPTION OF RESOLUTION NO. OB-13-21 APPROVING THE  
SECOND AMENDMENT TO THE AGREEMENT WITH  
MCDUGAL, LOVE, ECKIS, BOEHMER & FOLEY TO EXTEND  
THE TERM FOR TWO YEARS FOR LEGAL SERVICES

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**BACKGROUND:**

The law firm of McDougal, Love, Eckis, Boehmer & Foley has provided legal services to the City and former Redevelopment Agency for over seventeen years. The current legal services agreement was entered into with the former Redevelopment Agency in 2009, amended in 2010 and amended again in 2011. Pursuant to Health and Safety Code sections 34173 (b) and 34175(b), the City of Imperial Beach became the Successor Agency to the Imperial Beach Redevelopment Agency and assumed all obligations of the former Imperial Beach Redevelopment Agency as of February 1, 2012. The Imperial Beach Redevelopment Agency Successor Agency, therefore, became the successor-in-interest to the contract for legal services that existed between the former Imperial Beach Redevelopment Agency and the Firm at that time. The term of the current agreement expires as of June 30, 2013.

**DISCUSSION:**

The proposed Second Amendment to the Agreement extends the term of the current agreement by two years, through June 30, 2015, and authorizes house-keeping amendments to the agreement now that the Redevelopment Agency no longer exists. All remaining terms, including the hourly rates, of the current agreement will remain the same.

Because the original agreement and Second Amendment pertain to services performed for the City of Imperial Beach as well, the Second Amendment is already effective as to the City of Imperial Beach pursuant to City Council approval on May 15, 2013. The Successor Agency Board adopted Resolution No. SA-13-23 which approved the Second Amendment at their meeting on May 15, 2013. Staff is now recommending that the Oversight Board approve the Second Amendment so that it will also be effective as to work performed for the Successor Agency.

**ENVIRONMENTAL DETERMINATION:**

Not a project as defined by CEQA.

**FISCAL IMPACT:**

All attorney work for the Successor Agency will be billed at the same rate of \$144.50 per hour. The Successor Agency has budgeted for as-needed legal costs in its biannual administrative budgets provided to the Department of Finance.

**DEPARTMENT RECOMMENDATION:**

Staff recommends that the Oversight Board adopt Oversight Board Resolution No. OB-13-21 approving the Second Amendment to the Agreement with McDougal, Love, Eckis, Boehmer and Foley for legal services for an additional two year term.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.

Attachments:

1. Resolution No. OB-13-21
2. Resolution No. SA-13-23
3. Second Amendment to Agreement
4. Original Agreement and First Amendment

RESOLUTION NO. OB-13-21

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, CALIFORNIA, AUTHORIZING THE SECOND AMENDMENT TO THE AGREEMENT WITH MCDUGAL, LOVE, ECKIS, BOEHMER & FOLEY TO EXTEND THE TERM FOR TWO YEARS FOR LEGAL SERVICES**

**WHEREAS**, the Imperial Beach Redevelopment Agency Successor Agency desires effective, efficient, and cost effective legal services; and

**WHEREAS**, pursuant to Health & Safety Code Sections 34173 (b) and 34175(b), the City of Imperial Beach became the Successor Agency to the Imperial Beach Redevelopment Agency and assumed all obligations of the former Imperial Beach Redevelopment Agency as of February 1, 2012. The Imperial Beach Redevelopment Agency Successor Agency, therefore, became the successor-in-interest to the contract for legal services that existed between the former Imperial Beach Redevelopment Agency and McDougal, Love, Eckis, Boehmer & Foley ("Firm") at that time; and

**WHEREAS**, the current Agreement with the Firm and the former Imperial Beach Redevelopment Agency expires on June 30, 2013 pursuant to the terms of the First Amendment and the Board now wishes to extend the term of the current Agreement by two years because it is necessary and convenient for the management of Successor Agency affairs; and

**WHEREAS**, the Firm will perform these services and responsibilities as stated in the Agreement and the First and Second Amendments to the Agreement; and

**WHEREAS**, the Successor Agency Board adopted Resolution No. SA-13-23 which approved the Second Amendment at their meeting on May 15, 2013.

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

1. The above-listed recitals are true and correct and are hereby incorporated as findings.
2. The Oversight Board hereby approves the Second Amendment to the Agreement with McDougal, Love, Eckis, Boehmer & Foley to extend the term of the Agreement to June 30, 2015 and to pay the hourly rate as indicated in the Second Amendment.
3. The Oversight Board hereby authorizes and directs the Chairman of the Successor Agency to execute said Second Amendment to the Agreement for and on behalf of the Imperial Beach Redevelopment Agency Successor Agency upon taking any necessary steps for approval as required by law.

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 12th day of June 2013, by the following vote:

<b>AYES:</b>	<b>BOARD MEMBERS:</b>
<b>NOES:</b>	<b>BOARD MEMBERS:</b>
<b>ABSENT:</b>	<b>BOARD MEMBERS:</b>

\_\_\_\_\_  
**MAYDA WINTER, CHAIRPERSON**

**ATTEST:**

\_\_\_\_\_  
**JACQUELINE M. HALD, MMC**  
**SECRETARY**

**A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, CALIFORNIA, AUTHORIZING THE SECOND AMENDMENT TO THE AGREEMENT WITH MCDUGAL, LOVE, ECKIS, BOEHMER & FOLEY TO EXTEND THE TERM FOR TWO YEARS FOR LEGAL SERVICES**

**WHEREAS**, the Imperial Beach Redevelopment Agency Successor Agency desires effective, efficient, and cost effective legal services; and

**WHEREAS**, pursuant to Health & Safety Code Sections 34173 (b) and 34175(b), the City of Imperial Beach became the Successor Agency to the Imperial Beach Redevelopment Agency and assumed all obligations of the former Imperial Beach Redevelopment Agency as of February 1, 2012. The Imperial Beach Redevelopment Agency Successor Agency, therefore, became the successor-in-interest to the contract for legal services that existed between the former Imperial Beach Redevelopment Agency and McDougal, Love, Eckis, Boehmer & Foley ("Firm") at that time; and

**WHEREAS**, the current Agreement with the Firm and the former Imperial Beach Redevelopment Agency expires on June 30, 2013 pursuant to the terms of the First Amendment and the Board now wishes to extend the term of the current Agreement by two years because it is necessary and convenient for the management of Successor Agency affairs; and

**WHEREAS**, the Firm will perform these services and responsibilities as stated in the Agreement and the First and Second Amendments to the Agreement.

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

1. The above-listed recitals are true and correct and are hereby incorporated as findings.
2. The Board hereby approves the Second Amendment to the Agreement with McDougal, Love, Eckis, Boehmer & Foley to extend the term of the Agreement to June 30, 2015 and to pay the hourly rate as indicated in the Second Amendment.
3. The Board hereby authorizes and directs the Chairman to execute said Second Amendment to the Agreement for and on behalf of the Imperial Beach Redevelopment Agency Successor Agency upon taking any necessary steps for approval as required by law.

**PASSED, APPROVED, AND ADOPTED** by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 15th day of May 2013, by the following vote:

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

Signature on File

\_\_\_\_\_  
**LORIE BRAGG, MAYOR PRO TEM**

**ATTEST:**

Signature on File

\_\_\_\_\_  
**JACQUELINE M. HALD, MMC**  
**CITY CLERK**

**SECOND AMENDMENT TO THE AGREEMENT FOR CITY ATTORNEY SERVICES  
BETWEEN  
THE CITY OF IMPERIAL BEACH, IMPERIAL BEACH REDEVELOPMENT AGENCY  
SUCCESSOR AGENCY**

**AND**

**McDOUGAL, LOVE, ECKIS, BOEHMER & FOLEY  
A Professional Corporation**

THIS SECOND AMENDMENT TO AGREEMENT (hereinafter referred to as "Second Amendment") is made this 15th day of May 2013, by and between the City of Imperial Beach, a Municipal Corporation, (hereinafter referred to as "City"), the Imperial Beach Redevelopment Agency Successor Agency (hereinafter referred to as "Successor Agency"), and McDougal, Love, Eckis, Boehmer & Foley, a Professional Corporation, (hereinafter referred to as "Attorneys" or "Firm"), (collectively the "Parties").

**RECITALS**

- A. The City and former Imperial Beach Redevelopment Agency entered into an agreement with the Firm for legal services (hereinafter referred to as "Agreement") on July 1, 2009.
- B. On May 4<sup>th</sup>, 2011, the Parties executed the First Amendment to the Agreement ("First Amendment") to extend the term of the Agreement to June 30, 2013.
- C. Pursuant to Health & Safety Code Sections 34173 (b) and 34175(b), the City of Imperial Beach became the Successor Agency to the Imperial Beach Redevelopment Agency and assumed all obligations of the former Imperial Beach Redevelopment Agency as of February 1, 2012. The Imperial Beach Redevelopment Agency Successor Agency, therefore, became the successor-in-interest to the contract for legal services that existed between the former Imperial Beach Redevelopment Agency and the Firm at that time.
- D. The Parties are executing this Second Amendment to the Agreement in accordance with Resolutions 2013-7335 and SA-13-23, which among other minor changes authorize a change in the term for an additional two years.

**NOW, THEREFORE, the Parties hereby agree as follows:**

1. Section 1.1 "Designation of City and Agency Attorney" is amended as follows:  
  
"The City and Agency appoint the following designated members of the law firm of McDougal, Love, Eckis, Boehmer & Foley in the following capacities:

Jennifer M. Lyon City Attorney, General Counsel (hereinafter "City Attorney")

~~Hilda R. Mendoza Deputy City Attorney~~

~~David M. Stotland Deputy City Attorney~~

Steven E. Boehmer Special Counsel"

*(The remainder of Section 1.1 is unchanged.)*

2. Section 6 "Term" of the Agreement is amended in its entirety to read as follows:

"The services to be provided by Attorneys under this Agreement shall begin on July 1, 2009 and end on June 30, 2015."

3. Section B.7., of Exhibit "A" "Attorney Services" is hereby added to read as follows:

"Notwithstanding anything in the Agreement or the First Amendment, all legal advice pertaining to the Imperial Beach Redevelopment Agency Successor Agency shall be billed at the hourly rates set forth on Exhibit B."

4. All references to "Imperial Beach Redevelopment Agency," "Redevelopment Agency" or "Agency" in the Agreement and First Amendment shall refer to the "Successor Agency."

5. This Second Amendment shall become effective and enforceable with respect to the City and Firm upon execution by the City and Firm. The Second Amendment shall become effective and enforceable with respect to the Successor Agency upon both: (1) the Successor Agency's approval and execution of the Amendment; and (2) the Oversight Board's approval of the Amendment by Resolution, subject to the Oversight Board's actions and approval becoming effective pursuant to Health and Safety Code Section 34179(h) of the Dissolution Act.

6. Capitalized Terms. Capitalized terms used but not otherwise defined in this Second Amendment shall have the meanings assigned to them in the Agreement.

7. Continuing Effect. Except as expressly modified or amended by this Second Amendment, all terms and provisions of the Agreement shall remain in full force and effect.

8. Conflicts. If there is a conflict between any provisions of the Agreement, the First Amendment and/or this Second Amendment, all provisions of this Second Amendment shall control.

9. Execution in Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original.

Executed on the date and year first indicated above at Imperial Beach, California.

CITY OF IMPERIAL BEACH,  
a Municipal Corporation

Signature on File

By \_\_\_\_\_  
JIM JANNEY, Mayor

McDOUGAL, LOVE, ECKIS, BOEHMER  
& FOLEY, a Professional Corporation

Signature on File

By \_\_\_\_\_  
STEVEN E. BOEHMER

IMPERIAL BEACH REDEVELOPMENT  
AGENCY SUCCESSOR AGENCY

Signature on File

By \_\_\_\_\_  
JIM JANNEY, CHAIRMAN

Concurrence:

Signature on File

Jennifer M. Lyon

**AGREEMENT FOR CITY ATTORNEY SERVICES BETWEEN  
THE CITY OF IMPERIAL BEACH AND  
THE IMPERIAL BEACH REDEVELOPMENT AGENCY**

**AND**

**McDOUGAL, LOVE, ECKIS, SMITH, BOEHMER & FOLEY  
A Professional Corporation**

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THIS AGREEMENT is made this 1<sup>st</sup> day of July 2009, by and between the City of Imperial Beach, a Municipal Corporation, (hereinafter referred to as "City"), the Imperial Beach Redevelopment Agency, (hereinafter referred to as "Agency"), and McDougal, Love, Eckis, Smith, Boehmer & Foley, a Professional Corporation, (hereinafter referred to as "Attorneys" or "Firm"). The parties agree that City and Agency shall retain the Attorneys to perform legal services on the terms and conditions set forth herein.

**RECITALS**

- A. The City and Agency require legal services customarily provided by the offices of a city attorney appointed by the City Council.
- B. Attorneys are fully qualified to provide the legal services sought by the City and Agency and willing to provide such legal services.
- C. Attorneys are willing to devote such time as may be necessary to provide such services in keeping with the highest standards of the legal profession and refrain from any employment that would conflict with representation of the City and Agency.

NOW, THEREFORE, the parties hereby agree as follows:

**1. GENERAL RETAINER SERVICES**

**1.1 Designation of City and Agency Attorney.**

The City and Agency shall appoint the following designated members of the law firm of McDougal, Love, Eckis, Smith, Boehmer & Foley in the following capacities:

James P. Lough	City Attorney, General Counsel (hereinafter "City Attorney")
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David Stotland	Deputy City Attorney
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Steven E. Boehmer	Special Counsel
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The City Attorney may assign other attorneys in the Firm to work on City and Agency matters on an as-needed basis.

Attorneys shall not replace the designated City Attorney without the City Council's prior approval, except as may be necessary from time to time due to illness or vacation scheduling, in which case approval of a substitute attorney shall be obtained from the City Manager.

The City Attorney shall devote such time as necessary to perform those duties set forth on Exhibit "A", including the provision of Political Reform Act conflict of interest assistance (related to the Political Reform Act and other applicable conflict of interest laws) on behalf of the City to City employees and officials upon appropriate request. The Attorneys shall represent the City in all litigation except where the City Council may otherwise direct.

General Counsel shall perform those duties set forth on Exhibit "A" applicable to general counsel, including the provision of conflict of interest assistance (related to the Political Reform Act and other applicable conflict of interest laws) on behalf of the Agency to Agency employees and officials upon appropriate request. General Counsel shall represent the Agency in all litigation except where the Agency may otherwise direct.

The Attorneys' duties shall specifically include those set forth in Exhibit "A" attached and shall be performed by such members of the law firm as designated by the City Attorney and under the City Attorney's supervision.

## **1.2 Independent Contractor.**

No employment relationship is created by this Agreement. Attorneys shall, for all purposes, be independent contractors to the City.

Attorneys shall not at any time or in any manner represent that they or any of their employees or agents are in any manner employees of the City. City acknowledges and agrees that the City Attorney, Assistant City Attorney, Deputy City Attorney and special counsel representing the City and the Agency will need to represent to others their capacity and relationship to the City.

Attorneys shall fulfill the professional responsibilities and duties under this Agreement in the manner that in Attorneys' sole discretion is deemed appropriate, subject to customary limitations that exist between an attorney and the client. Attorneys shall maintain independent ethical judgment in the conduct of legal services on behalf of the City and Agency.

### **1.3 Client is the City**

Attorneys have been retained to represent the City and Agency as organizations, and owe a duty of loyalty to the organization. In the event the City's interest becomes adverse to the interest of a Council Member or staff member, Attorneys shall explain to the individual(s) that the organization is the client, that he/she cannot represent the individual(s) due to the conflict or potential conflict of interest, and that the individual(s) may wish to obtain independent counsel. When appropriate, Attorneys shall advise such individual(s) that any discussions with Attorneys may no longer be privileged.

In the event that Attorneys know that an individual intends to act (or refuses to act) in a manner related to the representation that is (1) a violation of a legal duty to the City, or (2) a violation of law which reasonably might be imputed to the City, and the individual's act (or refusal to act) is likely to result in substantial injury to the City, Attorneys shall proceed as is reasonably necessary in the best interest of the City.

### **1.4 City Attorney Services.**

Attorneys shall perform those services as set forth in Exhibit "A" hereto.

## **2. COMPENSATION**

### **2.1 Basic Retainer for General Services**

The City agrees to initially pay to Attorneys a monthly retainer in the amount of Eight Thousand Two Hundred Twenty-seven and No/100 Dollars (\$8,227.00) for all services defined as "general services" in Exhibit "A". All services rendered which are not "general services" shall be approved by the City Manager in advance of the services being performed, and are deemed "special services" and shall be compensated at the rates set forth in Exhibit "B" attached hereto.

### **2.2 Payment Terms**

The monthly retainer for City Attorney services and the monthly retainer for General Counsel services shall become due and payable on receipt of invoice no sooner than the first day of the month immediately following the month in which such services were provided. Payment for special services shall be made upon receipt of a detailed and itemized invoice. Payment for special services shall be made within thirty (30) days from the last day of the month in which Attorneys' services were provided.

## **2.3 Payments for Travel and Meeting Expenses**

The City shall reimburse the City Attorney for travel and meeting expenses approved by the City Council that are deemed necessary and reasonable. Meal costs, excluding alcoholic beverages, will be reimbursed if deemed necessary in connection with the approved travel authorized by the City.

## **2.4 Invoice Requirements**

2.4.1 General Legal Services. Billing for monthly legal services, including those services set forth in Exhibit "A", shall be submitted on separate invoices for each matter being handled.

2.4.2 Billing Increments. All invoices shall be detailed in six (6) minute, or one-tenth (0.1) hour increments.

2.4.3 Description of Work Performed. The invoice must briefly describe each item of work performed, the identity of the attorney, paralegal, or expert who performed the work and the date of the work. For example, if four distinct tasks were done on a file in one day, the tasks shall be separately noted on the bill with an individual time charge for each.

## **2.5 Prohibition Against Payment for Specified Activities**

Absent special circumstances and the prior written approval by the City, the City is not obligated to pay for the following:

2.5.1 New Attorneys. Time spent by new attorneys to become familiar with the matter.

2.5.2 One Attorney. More than one attorney to attend any court hearing, deposition, or a meeting with the City's officers and/or employees.

2.5.3 Paralegals. Paralegals may perform discovery, coordination of witnesses and other support services normally associated with civil litigation. Paralegal time shall include calendaring, issuance of subpoenas and discovery and coordinating offers in criminal matters filed under the Imperial Beach Municipal Code. No more than one paralegal working shall be tasked to work on the same matter or charge for consulting with another paralegal.

2.5.4 Expert Consultants and Witnesses. The need for, identify and qualifications of experts should be timely reported to the City. The City recognizes the need for well-qualified experts for the successful evaluation of and defense of matters. The City encourages the use of experts not only for defense purposes, but to assist in early evaluation of cases.

2.5.5 Secretarial Time. The City will not pay for secretarial time or secretarial overtime. The City does not pay attorneys or paralegals for secretarial tasks or tasks that should be subsumed into the City Attorney's overhead. For example, the City will not reimburse its City Attorney for time spent faxing, mailing, arranging for messengers, or calendaring.

2.5.6 Word Processing. The City does not reimburse for the costs of word processing.

## **2.6 Reimbursable Expenses.**

2.6.1 Photocopying Charges. The City will reimburse for photocopying costs only on a per-copy basis. The maximum charge reimbursable is \$0.20 per page for the copying of documents less than 25 pages; and \$0.10 per page for the copying of documents 25 pages or greater, including any time spent making the copies. Outside copying services will be used when possible, if the cost of doing so is less expensive to the City, or for special copying services that cannot be performed by Attorneys' staff.

2.6.2 Facsimile Charges. Facsimile transmissions may be used when necessary. The City will pay for facsimile transmissions based upon reasonable rates associated with actual cost, excluding secretarial time.

2.6.3 Telephone/Mail/Delivery Charges. Long distance telephone, cellular phone, and postal charges will be reimbursed at actual cost. Federal Express and similar delivery services shall be reimbursed only if Attorneys have obtained the prior approval of the City. Charges associated with delivery of materials, service of subpoenas and other documents, and filing by messenger services will be reimbursed at actual cost. Attorney should use reasonable efforts to accomplish work sufficiently in advance to allow delivery, filing, and service by U.S. Mail when not otherwise prescribed by law. Rush delivery costs will be reimbursed only if Attorneys have obtained the prior approval of the City.

2.6.4 Invoice Review and Discussion. The City will not pay for time used to prepare invoices or for discussion of invoices. If the City has questions about invoices or requires additional information on invoices, Attorneys must provide the information without charge to the City.

2.6.5 Unit Billing Time. The City will not pay unit billing time charges. Attorneys shall charge only for actual time spent.

2.6.6 File Opening and Closing. The City will not pay for time for file opening or file closing. These are not true tasks or adequate descriptions of legal activities.

2.6.7 Prior Work. The City will not pay for products that Attorneys have performed and billed for in other matters. This applies to the use of forms.

2.6.8 Payment. The City agrees to pay reimbursable costs within thirty (30) days from the last day of the month in which Attorneys incurred such costs.

### **3. INSURANCE**

Attorneys shall maintain their own liability, health, worker's compensation, disability and other insurance and the City shall not be responsible therefore. At a minimum, Attorneys shall maintain two million dollars (\$2,000,000) in general liability and two million (\$2,000,000) in malpractice insurance or such other amounts as may be required by the State Bar of California.

### **4. INDEMNIFICATION AND HOLD HARMLESS**

Attorneys shall defend, indemnify, and hold the City harmless from any and all claims, liabilities, obligations, and causes of action for injury or death of any person and for injury or damage or destruction of property that directly results from Attorneys' sole and exclusive professional negligence, or sole and exclusive negligence involving the operation of any motor vehicle. This provision shall not be construed to waive or affect the immunities of the parties provided to public agencies, their agents, and employees by law.

### **5. CONFLICT OF INTEREST**

Attorneys shall not knowingly represent any person or entity in any matter that may reasonably result in a contrary position to that of the City. However, upon full disclosure to the City, the City may waive this provision in writing.

### **6. TERM**

The services to be provided by Attorneys under this Agreement shall begin on July 1, 2009 and end on June 30, 2011.

### **7. TERMINATION**

The City may immediately terminate this Agreement for cause at any time. Either the City or Attorneys may terminate this Agreement with or without cause at any time by providing ninety (90) days' notice in writing to the other party.

**8. FILES**

Attorneys' files for matters involving the City, and works in progress thereof, are the property of the City and upon termination of this Agreement, shall, upon demand, be immediately delivered to the City. Attorneys may retain copies of pertinent documents, unless expressly prohibited or restricted by the City:

Executed on the date and year first indicated above at Imperial Beach, California.

CITY OF IMPERIAL BEACH,  
a Municipal Corporation

Signature on File

By

JAMES C. JANNEY, Mayor

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Signature on File

By

JAMES C. JANNEY, Chair

McDOUGAL, LOVE, ECKIS, SMITH,  
BOEHMER & FOLEY, a Professional  
Corporation

Signature on File

By

STEVEN E. BOEHMER

## EXHIBIT "A"

### Attorney Services

Except as provided elsewhere in this Agreement, Attorneys shall provide, in a professional manner, all of the usual, customary and necessary services, normally provided by a City Attorney and Redevelopment Agency General Counsel, to City and the Redevelopment Agency, as those services are required. Scope of services to be provided shall include the following:

#### A. General Services

1. Attendance at City Council/Redevelopment Agency meetings;
2. Regular established office hours at City Hall;
3. Attendance at departmental meetings, staff meetings or committee meetings deemed necessary and appropriate, or as requested by the City Manager or City Council;
4. Review and comment on City Council agenda items referred by the City Manager;
5. Research, preparation or review of routine written opinions, ordinances, resolutions, agreements, leases, public works contracts, and other routine documents of a legal nature necessary or requested by the City Manager or City Council;
6. Promptly respond to all requests for legal advice from the City Council Members, City Manager, Commissioners, department heads, and other designated personnel as appropriate;
7. Monitoring and advising the City Council and staff of legislation and case law affecting the City;
8. Rendering general advice and assistance in the administration of the City's general liability risk management and insurance programs;
9. Monitoring activities of any special outside counsel retained by the City;
10. Providing conflict of interest assistance to Council/Agency and staff on behalf of the City/Redevelopment Agency, and assisting

members and staff in seeking advice from the Fair Political Practices Commission;

11. Providing advice on issues related to the Brown Act (California Government Code section 54950 et seq.) and the California Public Records Act (California Government Code section 6250 et seq.); and
12. Represent the City in non-adversarial administrative proceedings, legislative hearings, and other intergovernmental meetings.

B. Special Services:

Special Services will be performed upon the request of the City Manager or City Council.

1. Provide legal advice and counsel to commissions and boards and attend commission meetings, board meetings, or committee meetings as deemed necessary by the City Manager or City Council;
2. Commence and prosecute all criminal or civil actions necessary and appropriate to enforce municipal ordinances, including enforcement through administrative proceedings, and the representation of the City and Agency, and their officers, agents and employees in matters in state and federal courts, as well as state and federal administrative agencies (such as the Department of Fair Employment and Housing, Equal Employment Opportunity Commission, Worker's Compensation Appeals Board, etc);
3. Represent the Redevelopment Agency as General Counsel, in administrative and civil litigation and in public finance matters such as assessments and tax related matters;
4. Render advice and assistance to City's representatives on labor relations matters, complex public records requests, review memoranda of understanding or other labor agreements, development agreements, advise on complex CEQA matters, draft implementing legislation or other pertinent documents and represent City before mediators or arbitrators on matters arising from memoranda of understanding or the City's personnel rules;
5. Render advice and assistance and represent the City/Agency in the administration of all claims and litigation filed by or against it; provided, however, that special counsel may be retained to defend or prosecute actions requiring special expertise, or in the event of a

conflict of interest which disqualifies the Attorneys from such representation; and

6. Real property transactions in which the City/Agency is the seller or purchaser, or is involved in any exchange, or is involved in any sale/leaseback or lease/leaseback arrangement.

EXHIBIT "B"

Hourly Billing Rates

City Attorney	\$144.50
Deputy City Attorney	\$144.50
Special Counsel	\$144.50
Paralegal	\$85.00

**AGREEMENT FOR CITY ATTORNEY SERVICES BETWEEN  
THE CITY OF IMPERIAL BEACH AND THE IMPERIAL BEACH REDEVELOPMENT  
AGENCY**

**AND**

**McDOUGAL, LOVE, ECKIS, BOEHMER & FOLEY  
A Professional Corporation**

---

THIS AGREEMENT is made this 1<sup>st</sup> day of July 2009 and amended as of February 3, 2010, by and between the City of Imperial Beach, a Municipal Corporation, (hereinafter referred to as "City"), the Imperial Beach Redevelopment Agency, (hereinafter referred to as "Agency"), and McDougal, Love, Eckis, Boehmer & Foley, a Professional Corporation, (hereinafter referred to as "Attorneys" or "Firm"). The parties agree that City and Agency shall retain the Attorneys to perform legal services on the terms and conditions set forth herein.

**RECITALS**

- A. The City and Agency require legal services customarily provided by the offices of a city attorney appointed by the City Council.
- B. Attorneys are fully qualified to provide the legal services sought by the City and Agency and willing to provide such legal services.
- C. Attorneys are willing to devote such time as may be necessary to provide such services in keeping with the highest standards of the legal profession and refrain from any employment that would conflict with representation of the City and Agency.

NOW, THEREFORE, the parties hereby agree as follows:

**1. GENERAL RETAINER SERVICES**

**1.1 Designation of City and Agency Attorney.**

The City and Agency shall appoint the following designated members of the law firm of McDougal, Love, Eckis, Boehmer & Foley in the following capacities:

Jennifer M. Lyon	City Attorney, General Counsel (hereinafter "City Attorney")
Hilda R. Mendoza	Deputy City Attorney

David M. Stotland                      Deputy City Attorney

Steven E. Boehmer                      Special Counsel

The City Attorney may assign other attorneys in the Firm to work on City and Agency matters on an as-needed basis.

Attorneys shall not replace the designated City Attorney without the City Council's prior approval, except as may be necessary from time to time due to illness or vacation scheduling, in which case approval of a substitute attorney shall be obtained from the City Manager.

The City Attorney shall devote such time as necessary to perform those duties set forth on Exhibit "A", including the provision of Political Reform Act conflict of interest assistance (related to the Political Reform Act and other applicable conflict of interest laws) on behalf of the City to City employees and officials upon appropriate request. The Attorneys shall represent the City in all litigation except where the City Council may otherwise direct.

General Counsel shall perform those duties set forth on Exhibit "A" applicable to general counsel, including the provision of conflict of interest assistance (related to the Political Reform Act and other applicable conflict of interest laws) on behalf of the Agency to Agency employees and officials upon appropriate request. General Counsel shall represent the Agency in all litigation except where Agency may otherwise direct.

The Attorneys' duties shall specifically include those set forth in Exhibit "A" attached and shall be performed by such members of the law firm as designated by the City Attorney and under the City Attorney's supervision.

#### **1.2 Independent Contractor.**

No employment relationship is created by this Agreement. Attorneys shall, for all purposes, be independent contractors to the City.

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### **1.3 Client is the City**

Attorneys have been retained to represent the City and Agency as organizations, and owe a duty of loyalty to the organization. In the event the City's interest becomes adverse to the interest of a Council Member or staff member, Attorneys shall explain to the individual(s) that the organization is the client, that he/she cannot represent the individual(s) due to the conflict or potential conflict of interest, and that the individual(s) may wish to obtain independent counsel. When appropriate, Attorneys shall advise such individual(s) that any discussions with Attorneys may no longer be privileged.

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### **1.4 City Attorney Services.**

Attorneys shall perform those services as set forth in Exhibit "A" hereto.

## **2. COMPENSATION**

### **2.1 Basic Retainer for General Services**

The City agrees to initially pay to Attorneys a monthly retainer in the amount of Eight Thousand Two Hundred Twenty-seven and No/100 Dollars (\$8,227.00) for all services defined as "general services" in Exhibit "A". All services rendered which are not "general services" shall be approved by the City Manager in advance of the services being performed, and are deemed "special services" and shall be compensated at the rates set forth in Exhibit "B" attached hereto.

### **2.2 Payment Terms**

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The City shall reimburse the City Attorney for travel and meeting expenses approved by the City Council that are deemed necessary and reasonable. Meal costs, excluding

alcoholic beverages, will be reimbursed if deemed necessary in connection with the approved travel authorized by the City.

## **2.4 Invoice Requirements**

2.4.1 General Legal Services. Billing for monthly legal services, including those services set forth in Exhibit "A", shall be submitted on separate invoices for each matter being handled.

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Absent special circumstances and the prior written approval by the City, the City is not obligated to pay for the following:

2.5.1 New Attorneys. Time spent by new attorneys to become familiar with the matter.

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2.5.6 Word Processing. The City does not reimburse for the costs of word processing.

## 2.6 Reimbursable Expenses.

2.6.1 Photocopying Charges. The City will reimburse for photocopying costs only on a per-copy basis. The maximum charge reimbursable is \$0.20 per page for the copying of documents less than 25 pages; and \$0.10 per page for the copying of documents 25 pages or greater, including any time spent making the copies. Outside copying services will be used when possible, if the cost of doing so is less expensive to the City, or for special copying services that cannot be performed by Attorneys' staff.

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2.6.4 Invoice Review and Discussion. The City will not pay for time used to prepare invoices or for discussion of invoices. If the City has questions about invoices or requires additional information on invoices, Attorneys must provide the information without charge to the City.

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2.6.8 Payment. The City agrees to pay reimbursable costs within thirty (30) days from the last day of the month in which Attorneys incurred such costs.

### **3. INSURANCE**

Attorneys shall maintain their own liability, health, worker's compensation, disability and other insurance and the City shall not be responsible therefor. At a minimum, Attorneys shall maintain two million dollars (\$2,000,000) in malpractice insurance, or such other amounts as may be required by the State Bar of California.

### **4. INDEMNIFICATION AND HOLD HARMLESS**

Attorneys shall defend, indemnify, and hold the City harmless from any and all claims, liabilities, obligations, and causes of action for injury or death of any person and for injury or damage or destruction of property that directly results from Attorneys' sole and exclusive professional negligence, or sole and exclusive negligence involving the operation of any motor vehicle. This provision shall not be construed to waive or affect the immunities of the parties provided to public agencies, their agents, and employees by law.

### **5. CONFLICT OF INTEREST**

Attorneys shall not knowingly represent any person or entity in any matter that may reasonably result in a contrary position to that of the City. However, upon full disclosure to the City, the City may waive this provision in writing.

### **6. TERM**

The services to be provided by Attorneys under this Agreement shall begin on July 1, 2009 and end on June 30, 2011.

### **7. TERMINATION**

The City may immediately terminate this Agreement for cause at any time. Either the City or Attorneys may terminate this Agreement with or without cause at any time by providing ninety (90) days' notice in writing to the other party.

### **8. PERFORMANCE EVALUATION**

There will be an evaluation of Attorneys' performance on or about May 1, 2010 and thereafter as deemed necessary and appropriate by the City Council.

### **9. FILES**

Attorneys' files for matters involving the City, and works in progress thereof, are the property of the City and upon termination of this Agreement, shall, upon demand, be immediately delivered to the City. Attorneys may retain copies of pertinent documents, unless expressly prohibited or restricted by the City.

Executed on the date and year first indicated above at Imperial Beach, California.

CITY OF IMPERIAL BEACH,  
a Municipal Corporation

Signature on File

By \_\_\_\_\_  
JIM JANNEY, Mayor

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Signature on File

By \_\_\_\_\_  
Jim Janney, Chair

Concurrence:  
Signature on File

Jennifer M. Lyon

McDOUGAL, LOVE, ECKIS, BOEHMER  
& FOLEY, a Professional Corporation

Signature on File

By \_\_\_\_\_  
STEVEN E. BOEHMER

## EXHIBIT "A"

### Attorney Services

Except as provided elsewhere in this Agreement, Attorneys shall provide, in a professional manner, all of the usual, customary and necessary services, normally provided by a City Attorney and Redevelopment Agency General Counsel, to City and the Redevelopment Agency, as those services are required. Scope of services to be provided shall include the following:

#### A. General Services

1. Attendance at City Council/Redevelopment Agency meetings;
2. Regular established office hours at City Hall;
3. Attendance at departmental meetings, staff meetings or committee meetings deemed necessary and appropriate, or as requested by the City Manager or City Council;
4. Review and comment on City Council agenda items referred by the City Manager;
5. Research, preparation or review of routine written opinions, ordinances, resolutions, agreements, leases, public works contracts, and other routine documents of a legal nature necessary or requested by the City Manager, or City Council;
6. Promptly respond to all requests for legal advice from the City Council Members, City Manager, Commissioners, department heads, and other designated personnel as appropriate;
7. Monitoring and advising the City Council and staff of legislation and case law affecting the City;
8. Rendering general advice and assistance in the administration of the City's general liability risk management and insurance programs;
9. Monitoring activities of any special outside counsel retained by the City;
10. Providing conflict of interest assistance to Council/Agency and staff on behalf of the City/Redevelopment Agency, and assisting members and staff in seeking advice from the Fair Political Practices Commission;

11. Providing advice on issues related to the Brown Act (California Government Code section 54950 et seq.) and the California Public Records Act (California Government Code section 6250 et seq.); and
12. Represent the City in non-adversarial administrative proceedings, legislative hearings, and other intergovernmental meetings.

B. Special Services:

Special Services will be performed upon the request of the City Manager or City Council.

1. Provide legal advice and counsel to commissions and boards and attend commission meetings, board meetings, or committee meetings as deemed necessary by the City Manager or City Council;
2. Commence and prosecute all criminal or civil actions necessary and appropriate to enforce municipal ordinances, including enforcement through administrative proceedings, and the representation of the City and Agency, and their officers, agents and employees in matters in state and federal courts, as well as state and federal administrative agencies (such as the Department of Fair Employment and Housing, Equal Employment Opportunity Commission, Worker's Compensation Appeals Board, etc);
3. Represent the Redevelopment Agency as General Counsel, in administrative and civil litigation and in public finance matters such as assessments and tax related matters;
4. Render advice and assistance to City's representatives on labor relations matters, complex public records requests, review memoranda of understanding or other labor agreements, development agreements, advise on complex CEQA matters, draft implementing legislation or other pertinent documents and represent City before mediators or arbitrators on matters arising from memoranda of understanding or the City's personnel rules;
5. Render advice and assistance and represent the City/Agency in the administration of all claims and litigation filed by or against it; provided, however, that special counsel may be retained to defend or prosecute actions requiring special expertise, or in the event of a conflict of interest which disqualifies the Attorneys from such representation; and

6. Real property transactions in which the City/Agency is the seller or purchaser, or is involved in any exchange, or is involved in any sale/leaseback or lease/leaseback arrangement.

EXHIBIT "B"

Hourly Billing Rates

Attorney	\$144.50
Deputy City Attorney	\$144.50
Special Counsel	\$144.50
Paralegal	\$ 85.00

**AMENDMENT TO THE AGREEMENT FOR CITY ATTORNEY SERVICES BETWEEN  
THE CITY OF IMPERIAL BEACH AND THE IMPERIAL BEACH REDEVELOPMENT  
AGENCY**

**AND**

**McDOUGAL, LOVE, ECKIS, BOEHMER & FOLEY  
A Professional Corporation**

---

THIS AMENDMENT TO AGREEMENT (hereinafter referred to as "Amendment") is made this 4th day of May 2011, by and between the City of Imperial Beach, a Municipal Corporation, (hereinafter referred to as "City"), the Imperial Beach Redevelopment Agency, (hereinafter referred to as "Agency"), and McDougal, Love, Eckis, Boehmer & Foley, a Professional Corporation, (hereinafter referred to as "Attorneys" or "Firm"), (collectively the "Parties").

**RECITALS**

- A. The City and Agency entered into an agreement with the Attorneys for legal services (hereinafter referred to as "Agreement") on February 3, 2010.
- B. The Parties are executing this Amendment to the Agreement in accordance with Resolution No. 2011-7033 and Resolution No. R-11-256, which authorize a change in the term for an additional two years.

NOW, THEREFORE, the parties hereby agree as follows:

- 1. Section 6, Term, of the Agreement is amended in its entirety to read as follows:  

"The services to be provided by Attorneys under this Agreement shall begin on July 1, 2009 and end on June 30, 2013."
- 2. Capitalized Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in the Agreement.
- 3. Continuing Effect. Except as expressly modified or amended by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.

4. Execution in Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original.

Executed on the date and year first indicated above at Imperial Beach, California.

CITY OF IMPERIAL BEACH,  
a Municipal Corporation

Signature on File

By \_\_\_\_\_  
JIM JANNEY, Mayor

IMPERIAL BEACH REDEVELOPMENT  
AGENCY

Signature on File

By \_\_\_\_\_  
Jim Janney, Chair

Concurrence:  
Signature on File

Jennifer M. Lyon

McDOUGAL, LOVE, ECKIS, BOEHMER  
& FOLEY, a Professional Corporation

Signature on File

By \_\_\_\_\_  
STEVEN E. BOEHMER