

OVERSIGHT BOARD OF THE  
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

MINUTES

FEBRUARY 26, 2014

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

SPECIAL MEETING – 10:30 a.m.

1. CALL TO ORDER

SECRETARY/CITY CLERK HALD called the meeting to order at 10:31 a.m.

2. ROLL CALL BY CITY CLERK/SECRETARY

Oversight Board Members present: Yanda, Saadat, Hentschke, Foltz

Oversight Board Members absent: West

Chairperson absent: Winter

Staff present: Deputy Executive Director Wade, City Attorney Lyon, Special Counsel  
Levan, Administrative Services Director Bradley, City Clerk/Secretary  
Hald

SECRETARY/CITY CLERK HALD announced that due to the recent resignation of Vice  
Chairperson Fernandez and the absence of Chairperson Winter, the remainder of the  
Oversight Board needs to select an Acting Chairperson to handle today's meeting.

**MOTION BY YANDA, SECOND BY FOLTZ TO SELECT BOARD MEMBER  
HENTSCHE AS THE ACTING CHAIRPERSON FOR TODAY'S OVERSIGHT BOARD  
MEETING. MOTION CARRIED BY THE FOLLOWING VOTE:**

**AYES: BOARD MEMBERS: YANDA, SAADAT, HENTSCHE, FOLTZ**  
**NOES: BOARD MEMBERS: NONE**  
**ABSENT: BOARD MEMBERS: WEST, WINTER**

3. PUBLIC COMMENTS

None.

4. REPORTS

A. APPROVAL OF MINUTES.

**MOTION BY SAADAT, SECOND BY FOLTZ, TO APPROVE THE OVERSIGHT  
BOARD REGULAR MEETING MINUTES OF NOVEMBER 13, 2013. MOTION  
CARRIED BY THE FOLLOWING VOTE:**

**AYES: BOARD MEMBERS: YANDA, SAADAT, HENTSCHE, FOLTZ**  
**NOES: BOARD MEMBERS: NONE**  
**ABSENT: BOARD MEMBERS: WEST, WINTER**

**B. ADOPTION OF RESOLUTION NO. OB-14-30 APPROVING THE  
REALLOCATION AND USE OF FUNDS RECEIVED FROM THE  
REDEVELOPMENT PROPERTY TAX TRUST FUND IN THE AMOUNT OF  
\$756,916 TO BE EXPENDED ON ENFORCEABLE OBLIGATIONS  
APPROVED ON RECOGNIZED OBLIGATION PAYMENT SCHEDULES.**

ACTING CHAIRPERSON HENTSCHE introduced the item.

DEPUTY EXECUTIVE DIRECTOR WADE gave a PowerPoint presentation on the item.

In response to Board Member Saadat's question about the status of the Affordable Housing Litigation, SPECIAL COUNSEL LEVAN stated that the case is slowly moving through the process. On behalf of their clients, her office filed a motion to join the Department of Finance as a respondent to the action because of the relief that the Petitioner is trying to seek. She also stated that the hearing was last Friday and that the judge has yet to make a ruling on the issue. Additionally, the Petitioner has been conducting discovery and the clients are providing appropriate responsive documents.

**MOTION BY SAADAT, SECOND BY FOLTZ, TO ADOPT RESOLUTION NO. OB-14-30 APPROVING THE REALLOCATION AND USE OF FUNDS RECEIVED FROM THE REDEVELOPMENT PROPERTY TAX TRUST FUND IN THE AMOUNT OF \$756,916 TO BE EXPENDED ON ENFORCEABLE OBLIGATIONS APPROVED ON RECOGNIZED OBLIGATION PAYMENT SCHEDULES. MOTION CARRIED BY THE FOLLOWING VOTE:**

**AYES: BOARD MEMBERS: YANDA, SAADAT, HENTSCHKE, FOLTZ  
NOES: BOARD MEMBERS: NONE  
ABSENT: BOARD MEMBERS: WEST, WINTER**

**C. ADOPTION OF RESOLUTION NO. OB-14-31 FINDING THAT THE LOAN TOTALING \$3,738,100 MADE BY THE CITY OF IMPERIAL BEACH TO THE FORMER IMPERIAL BEACH REDEVELOPMENT AGENCY WAS FOR LEGITIMATE REDEVELOPMENT PURPOSES, AND OTHER RELATED ACTIONS TAKEN IN ACCORDANCE WITH HEALTH AND SAFETY CODE SECTION 34191.4(b).**

ACTING CHAIRPERSON HENTSCHKE introduced the item.

DEPUTY EXECUTIVE DIRECTOR WADE reported on the item.

SPECIAL COUNSEL LEVAN stated that should the DOF approve this payment, 20% of what is paid back to the City is statutorily required to be transferred to the Low and Moderate Income Housing Asset Fund which is maintained by the Housing Authority for Imperial Beach to provide for low and moderate income housing.

DEPUTY EXECUTIVE DIRECTOR WADE spoke about the history of Redevelopment Agency funds being spent on redevelopment purposes/activities which were substantiated through financial audits.

**MOTION BY FOLTZ, SECOND BY SADAAT, TO ADOPT RESOLUTION NO. OB-14-31 FINDING THAT THE LOAN TOTALING \$3,738,100 MADE BY THE CITY OF IMPERIAL BEACH TO THE FORMER IMPERIAL BEACH REDEVELOPMENT AGENCY WAS FOR LEGITIMATE REDEVELOPMENT PURPOSES, AND OTHER RELATED ACTIONS TAKEN IN ACCORDANCE WITH HEALTH AND SAFETY CODE SECTION 34191.4(b). MOTION CARRIED BY THE FOLLOWING VOTE:**

**AYES: BOARD MEMBERS: YANDA, SAADAT, HENTSCHKE, FOLTZ  
NOES: BOARD MEMBERS: NONE  
ABSENT: BOARD MEMBERS: WEST, WINTER**

**D. ADOPTION OF RESOLUTION NO. OB-14-32 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE ADMINISTRATIVE BUDGET FOR THE PERIOD OF JULY 1, 2014 THROUGH DECEMBER 31, 2014 AND RELATED ACTIONS.**

ACTING CHAIRPERSON HENTSCHKE introduced the item.

DEPUTY EXECUTIVE DIRECTOR WADE reported on the item.

**MOTION BY FOLTZ, SECOND BY SADAAT, TO ADOPT RESOLUTION NO. OB-14-32 OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE ADMINISTRATIVE BUDGET FOR THE PERIOD OF JULY 1, 2014 THROUGH DECEMBER 31, 2014 AND RELATED ACTIONS. MOTION CARRIED BY THE FOLLOWING VOTE:**

**AYES: BOARD MEMBERS: YANDA, SAADAT, HENTSCHKE, FOLTZ  
NOES: BOARD MEMBERS: NONE  
ABSENT: BOARD MEMBERS: WEST, WINTER**

**E. ADOPTION OF RESOLUTION NO. OB-14-33 OF THE OVERSIGHT BOARD TO THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING AND ADOPTING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JULY 1, 2014 THROUGH DECEMBER 31, 2014 (ROPS 14-15A).**

ACTING CHAIRPERSON HENTSCHKE introduced the item.

DEPUTY EXECUTIVE DIRECTOR WADE reported on the item and announced that an Item 38 was added to the Recognized Obligation Payment Schedule (ROPS). He noted that when the ROPS went before the Successor Agency last week, Assembly Bill 471 was pending approval by the Governor. The Bill would allow Successor Agency's to place administrative costs related to performing duties of the Housing Authority acting as the Housing Successor Entity. He noted that the Governor signed the bill and it is now law. He requested that the amount for Item 38 be reduced from \$150,000 to \$75,000 (the amount for six-months) with a corresponding change to the summary page.

**MOTION BY YANDA, SECOND BY FOLTZ, TO ADOPT RESOLUTION NO. OB-14-33 OF THE OVERSIGHT BOARD TO THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING AND ADOPTING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JULY 1, 2014 THROUGH DECEMBER 31, 2014 (ROPS 14-15A) AS AMENDED BY STAFF. MOTION CARRIED BY THE FOLLOWING VOTE:**

**AYES: BOARD MEMBERS: YANDA, SAADAT, HENTSCHKE, FOLTZ  
NOES: BOARD MEMBERS: NONE  
ABSENT: BOARD MEMBERS: WEST, WINTER**

DEPUTY EXECUTIVE DIRECTOR WADE introduced Doug Bradley, Administrative Services Director.

**4. ADJOURNMENT**

The meeting was adjourned at 11:37 a.m.

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Dan Hentschke  
ACTING CHAIR PERSON

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Jacqueline M. Hald, MMC  
CITY CLERK/SECRETARY



**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:** ANDY HALL, EXECUTIVE DIRECTOR  
GREGORY WADE, DEPUTY DIRECTOR 

**MEETING DATE:** AUGUST 13, 2014

**SUBJECT:** ELECTION OF VICE CHAIR

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**BACKGROUND:**

AB 26 requires that there shall be an oversight board ("Oversight Board") established for each of the former California redevelopment agency's successor agencies to supervise the activities of the Successor Agency and the wind down of the dissolved Redevelopment Agency's affairs pursuant to AB 26.

**DISCUSSION:**

Deric Fernandez, who served as the Oversight Board's Vice Chair, resigned his position on January 21, 2014. Because of Mr. Fernandez's resignation, the position of Vice Chair is currently vacant. The Oversight Board must elect one of its members as a Vice Chair to preside over meetings in the absence of the Chair.

**ENVIRONMENTAL DETERMINATION:**

This activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

**FISCAL IMPACT:**

None related to this report.

**EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Elect a Vice Chair for the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency.





AGENDA ITEM NO. 4D

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: ANDY HALL, EXECUTIVE DIRECTOR  
GREGORY WADE, DEPUTY DIRECTOR *GW*

MEETING DATE: AUGUST 13, 2014

ORIGINATING DEPT.: SUCCESSOR AGENCY

SUBJECT: ADOPTION OF OVERSIGHT BOARD RESOLUTION NO. OB-  
14-34 APPROVING AN AGREEMENT REGARDING  
RETENTION AND EXPENDITURE OF BOND PROCEEDS  
FROM 2010 TAX ALLOCATION BONDS BETWEEN THE  
SUCCESSOR AGENCY AND THE CITY OF IMPERIAL BEACH  
AS AN ENFORCEABLE OBLIGATION, AND APPROVING  
RELATED ACTIONS

**EXECUTIVE SUMMARY:**

The former Redevelopment Agency issued Tax Allocation Bonds in November 2010. During the dissolution of the former Redevelopment Agency, the 2010 Bond Proceeds ("Bond Proceeds") were approved for expenditure on enforceable obligations by the State Department of Finance ("DOF") on Recognized Obligation Payment Schedules ("ROPS") of the Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency"). On April 12, 2013, the DOF issued a Finding of Completion to the Successor Agency authorizing the Successor Agency to expend the Bond Proceeds for their intended purpose. Recently, \$1,274,452 of unallocated Bond Proceeds being held by the Bond Trustee, Wells Fargo were transferred to the Successor Agency and, on June 4, 2014, were allocated by the City Council to fund the Alley Improvement Project, subject to subsequent approval on a future ROPS. Additionally, Bond Proceeds in the approximate amount of \$400,000 that were previously transferred to the City of Imperial Beach ("City") for specific projects remain unspent and are available to be reallocated toward other projects consistent with the Trust Indenture and the Official Statement and also subject to approval on a ROPS. These funds have been identified as available to assist with development of the Tower23 IB Hotel. Finally, Bond Proceeds of up to \$1.8 million have been allocated to the Bikeway Village project, however, the City has applied for grant funds that, if awarded, may reduce the amount of Bond Proceeds needed for the Bikeway Village project such that additional Bond Proceeds would become available for reallocation to other projects consistent with the Trust Indenture and Official Bond Statement. On August 6, 2014, the Successor Agency adopted Resolution No. SA-14-43 approving an "Agreement Regarding Retention and Expenditure of Bond Proceeds from 2010 Tax Allocation Bonds" ("Agreement") between the City and Successor Agency allowing the City to receive and retain the Bond Proceeds for the City's use and expenditure on specified projects consistent with the purposes set forth in the Trust Indenture and the Official Statement. Staff recommends adoption of OB-14-34.

**BACKGROUND:**

On November 1, 2010 the former Redevelopment Agency and Wells Fargo Bank, National Association ("Trustee") issued 2010 Tax Allocation Bonds in the principal amount of \$21,595,000 ("2010 Tax Allocation Bonds"). Pursuant to the Official Statement for the 2010 Tax Allocation Bonds, the Bond Proceeds are required to be used to provide financing for projects of benefit to the Palm Avenue/Commercial Redevelopment Project Area in accordance with the Redevelopment Plan and the Redevelopment Law. More specifically, the 2010 Tax Allocation Bonds specify that the Bond Proceeds were to be used for a Hotel Redevelopment Project, Street and Alley Improvements, Airfield Property Improvements (i.e., the Bikeway Village project), Palm Avenue Corridor Improvements, City Facility Upgrades, and other projects within or of benefit to the Palm Avenue/Commercial Redevelopment Project Area.

On June 28, 2011, Assembly Bill No.X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) ("AB 26") was signed by the Governor of California making certain changes to the Redevelopment Law and to the California Health and Safety Code ("H&S Code"). Pursuant to AB 26, as modified by the California Supreme Court's December 29, 2011 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. AB 26 and related H&S Code provisions were subsequently amended. AB 26 and all subsequent amendments are hereinafter referred to as the "Dissolution Act."

On April 12, 2013, the California Department of Finance ("DOF") issued a Finding of Completion to the Successor Agency pursuant to H&S Code Section 34179.7 of the Dissolution Act, which specifically authorizes the Successor Agency to utilize bond proceeds issued prior to January 1, 2011 in a manner consistent with the original bond covenants. H&S Code Section 34191.4(c) of the Dissolution Act provides that once a Finding of Completion has been issued by the DOF, bond proceeds derived from bonds issued on or before December 31, 2010 shall be used for the purposes for which the bonds were sold, and bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants. An expenditure made pursuant to H&S Code Section 34191.4(c) shall constitute the creation of excess bond proceeds obligations to be paid from the excess bond proceeds. Excess bond proceeds obligations are required to be listed separately on a Recognized Obligation Payment Schedule ("ROPS") for approval.

**ANALYSIS:**

As of August 6, 2014, a total amount of \$1,674,452 in bond proceeds ("Bond Proceeds") from the 2010 Tax Allocation Bonds of the Redevelopment Agency remain to be spent pursuant to the Trust Indenture and Official Statement of the 2010 Tax Allocation Bonds. Of this amount, Bond Proceeds in the amount of \$1,274,452 were delivered to the Successor Agency by the Trustee during the ROPS 13-14B period (January to June 2013) for expenditure toward projects consistent with the Trust Indenture and the Official Statement and are currently being held by the Successor Agency. On June 4, 2014, these Bond Proceeds were allocated by the City Council to fund the Alley Improvement Project, subject to subsequent approval of this use of the Bond Proceeds on a future ROPS by the Successor Agency, Oversight Board and DOF. Additionally, Bond Proceeds in the approximate amount of \$400,000 that were previously transferred to the City for expenditure toward specific projects currently remain unspent and are

available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement. These funds have been identified as available to assist with the development of a new hotel in the City. Finally, Bond Proceeds of up to \$1.8 were previously allocated to the Bikeway Village project pursuant to an Owner Participation Agreement. Recently, the City applied for grant funds in the amount of \$1.8 million for this project that, if awarded, may reduce the amount of Bond Proceeds needed for the Bikeway Village project. Staff estimates that up to \$1.4 million of Bond Proceeds could be made available if the grant is awarded making these Bond Proceeds available for reallocation to other projects consistent with the Trust Indenture and Official Bond Statement.

The Successor Agency and the City desire to enter into an "Agreement Regarding Retention and Expenditure of Bond Proceeds from 2010 Tax Allocation Bonds" ("Agreement") in order for the City to receive and retain the Bond Proceeds for the City's use and expenditure consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds. Under this proposed Agreement, the projects for which the Bond Proceeds are anticipated to be expended include \$1,274,452 for use toward the improvement of fourteen (14) unpaved alleys within the Palm Avenue/Commercial Redevelopment Project (the "Alley Improvement Project"), and approximately \$400,000 for use toward the development of the proposed Tower23 IB Hotel, or for other projects as otherwise permitted by the 2010 Tax Allocation Bonds. Additionally, the Agreement provides for "Potentially Available Bond Proceeds" in the approximate amount of \$1,400,000 that could be made available from up to \$1,800,000 of "Other Bond Proceeds" allocated to the Bikeway Village project if a grant is awarded for that project. If a grant is awarded for the Bikeway Village project, these Potentially Available Bond Proceeds could become available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement.

Pursuant to H&S Code Sections 34178(a) and 34180(h) of the Dissolution Act, the Successor Agency may enter into such an Agreement with the City upon obtaining the approval of the Oversight Board. As such, on August 6, 2014, the Successor Agency adopted Resolution No. SA-14-43 approving the Agreement and hereby submits the Agreement to the Oversight Board for consideration of approval. If the Oversight Board approves the Agreement on August 13, 2014, at the Successor Agency meeting on August 20, 2014 and the Oversight Board meeting on September 10, 2014, the Successor Agency and the Oversight Board will each consider the approval of the ROPS 14-15B for the period of January 1, 2015 through June 30, 2015, which will include the expenditure of the Bond Proceeds pursuant to the Agreement as an enforceable obligation. This Agreement will then be subject to approval by the DOF on the ROPS 14-15B.

**ENVIRONMENTAL DETERMINATION:**

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

**FISCAL IMPACT:**

As noted above, there is \$1,274,452 of Bond 2010 Proceeds available for use toward the improvement of fourteen (14) unpaved alleys within the Palm Avenue/Commercial Redevelopment Project (the "Alley Improvement Project") and approximately \$400,000 for use toward the development the proposed Tower23 IB Hotel, or as otherwise permitted by the 2010 Tax Allocation Bonds. Additionally, "Potentially Available Bond Proceeds" in the approximate

amount of \$1,400,000 could be made available from up to \$1,800,000 of "Other Bond Proceeds" allocated to the Bikeway Village project if a grant is awarded for that project.

**RECOMMENDATION:**

That the Oversight Board adopt Resolution No. OB-14-34 approving an Agreement Regarding Retention and Expenditure of Bond Proceeds from 2010 Tax Allocation Bonds (the "Agreement") as an enforceable obligation between the Successor Agency and the City in order for the City to receive and retain the Bond Proceeds for the City's use and expenditure consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds and authorizing the execution of the Agreement.

Attachments:

1. Bond Fund Expenditure Agreement
2. Resolution No. OB-14-34

**AGREEMENT  
REGARDING RETENTION AND EXPENDITURE OF  
BOND PROCEEDS FROM 2010 TAX ALLOCATION BONDS**

This Agreement Regarding Retention and Expenditure of Bond Proceeds from 2010 Tax Allocation Bonds (this “**Agreement**”) is dated as of \_\_\_\_\_, 2014 and is entered into by and between the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity duly created, validly existing and in good standing under the laws of the State of California (the “**Successor Agency**”) and the CITY OF IMPERIAL BEACH, a municipal corporation (the “**City**”). The Successor Agency and the City are hereinafter collectively referred to as the “**Parties**”.

RECITALS

A. Pursuant to authority granted by the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code (the “**H&S Code**”) (the “**CRL**”), the former Imperial Beach Redevelopment Agency, a public body, corporate and politic (the “**Former RDA**”) had the responsibility of implementing the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area, duly adopted by the City Council of the City of Imperial Beach (the “**City Council**”) on February 7, 1996 by Ordinance No. 96-901, as amended by the City Council on July 18, 2001 by the adoption of Ordinance No. 01-970, as further amended by the City Council on December 20, 2006 by the adoption of Ordinance No. 2006-1066, and as further amended by the City Council on March 19, 2008 by the adoption of Ordinance No. 2008-1066 (the “**Redevelopment Plan**”).

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

C. Pursuant to Page 4 of the Official Statement for the 2010 Tax Allocation Bonds, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference, the 2010 Tax Allocation Bonds are required to be used to provide financing for projects of benefit to the Palm Avenue/Commercial Redevelopment Project Area in accordance with the Redevelopment Plan and the CRL. More specifically, the 2010 Tax Allocation Bonds are to be used for Hotel Redevelopment Project; Street and Alley Improvements; Airfield Property Improvements; Library Expansion; Palm Avenue Corridor Improvements; City Facility Upgrades; and other projects within or of benefit to

the Palm Avenue/Commercial Redevelopment Project Area in the Former RDA's discretion (the "**Financing Plan**").

D. Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("**AB 26**") was signed by the Governor of California on June 28, 2011, making certain changes to the CRL and to the H&S Code including adding Part 1.8 (commencing with Section 34161) ("**Part 1.8**") and Part 1.85 (commencing with Section 34170) ("**Part 1.85**") to Division 24 of the H&S Code.

E. On December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding AB 26 largely constitutional and reformed certain deadlines set forth in AB 26.

F. 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 Former RDA, 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.

G. Pursuant to Resolution No. 2012-7136, adopted by the City Council on January 5, 2012, the City agreed to serve as the successor agency to the Former RDA upon the dissolution of the Former RDA on February 1, 2012 by operation of law under AB 26.

H. On February 5, 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. AB 26 and related H&S Code provisions were subsequently amended. AB 26 and all subsequent amendments are hereinafter referred to as the "**Dissolution Act**".

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

J. The Successor Agency was issued a FOC by the DOF on April 12, 2013 authorizing the Successor Agency to utilize bond proceeds issued prior to January 1,

2011 in a manner consistent with the original bond covenants pursuant to H&S Code Section 34191.4(c).

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

L. In addition, as of August 6, 2014, an approximate amount of \$1,800,000 of other bond proceeds (the “**Other Bond Proceeds**”) from the 2010 Tax Allocation Bonds of the Former RDA remain to be spent pursuant to the Trust Indenture and Official Statement of the 2010 Tax Allocation Bonds and have been allocated for the Bikeway Village project (referred in the Trust Indenture and Official Statement as the Airfield Property Improvements). The Other Bond Proceeds were previously transferred to the City for expenditure toward the Bikeway Village project but remain unspent and may be available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement. The City has applied for grant funds that, if awarded, may reduce the amount of Other Bond Proceeds needed for the Bikeway Village project in the approximate amount of \$1,400,000; such portion of the Other Bond Proceeds that would become available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement upon the awarding of such grant shall be referred to herein as the “**Potentially Available Bond Proceeds**”.

M. The Available Bond Proceeds and the Potentially Available Bond Proceeds shall collectively be referred to herein as the “**Bond Proceeds**”.

N. The Parties desire to enter into this Agreement in order for the City to receive and retain the Bond Proceeds for the City’s use and expenditure of the Bond Proceeds consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds and all applicable covenants therein, and the requirements of the CRL applicable to the expenditure of redevelopment funds. The projects for which the Bond Proceeds are anticipated to be expended include, without limitation, approximately \$1,274,452 for use toward the improvement of fourteen (14) unpaved alleys within the Palm Avenue/Commercial Redevelopment Project, and up to \$1,800,000 (consisting of approximately \$400,000 in Available Bond Proceeds and up to \$1,400,000 in Potentially Available Bond Proceeds) for use toward the development of the proposed Tower23 Hotel, or for other projects as otherwise permitted by the 2010 Tax Allocation Bonds.

O. An oversight board has been established for the Successor Agency (“**Oversight Board**”) and all seven (7) members have been appointed to the Oversight Board pursuant to H&S Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in H&S Code Sections 34179 through 34181 of the Dissolution Act.

P. Pursuant to H&S Code Sections 34178(a) and 34180(h), the Successor Agency may enter into this Agreement with the City upon obtaining the approval of the Oversight Board.

QO. At the Successor Agency meeting scheduled for August 6, 2014, the Successor Agency will consider the approval of this Agreement. Thereafter, at the Oversight Board meeting scheduled for August 13, 2014, the Oversight Board will consider the approval of this Agreement. Thereafter, at subsequent meetings of the Successor Agency and Oversight Board, respectively, the Successor Agency and the Oversight Board will each consider the approval of the ROPS 14-15B for the period of January 1, 2015 through June 30, 2015, which ROPS 14-15B will include the expenditure of the Bond Proceeds pursuant to this Agreement as an enforceable obligation.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing Recitals are hereby incorporated by reference and made part of this Agreement.
2. Effective Date. This Agreement shall become effective when it is deemed effective in accordance with H&S Code Section 34179(h) (the “**Effective Date**”) and executed by the Parties.
3. Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect until the date that all Bond Proceeds are expended in accordance with the terms, conditions and purposes set forth in this Agreement.
4. Retention and Transfer of Bond Proceeds. Upon the Effective Date, the Successor Agency shall transfer the Bond Proceeds to the City, and the City shall be deemed authorized to retain the Bond Proceeds, and the City shall deposit and hold such funds into a separate Bond Proceeds account for the City’s use in accordance with the terms, conditions and purposes set forth in this Agreement.
5. Use of Bond Proceeds. The City agrees that it shall use the Bond Proceeds solely for the purposes identified in the Recitals above and for projects consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds and all applicable covenants therein, and the requirements of the CRL applicable to the expenditure of redevelopment funds.

6. Project Approvals: Environmental Review. This Agreement is not intended to limit in any manner the discretion of the City in connection with the issuance of approvals and entitlements for the projects described in this Agreement, nor to avoid legally required processes attendant to project approval including, without limitation, the undertaking and completion of any required environmental review pursuant to the California Environmental Quality Act and/or the National Environmental Policy Act, as applicable, and the review and approval of plans and specifications.

7. Severability. If any term, provision, covenant or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void or unenforceable, then the remaining provisions, covenants and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant or condition can be accomplished to the maximum extent legally permissible.

8. No Third-Party Beneficiaries. Nothing in this Agreement is intended to create any third-party beneficiaries to this Agreement, and no person or entity other than the Successor Agency and the City, and the permitted successors and assigns of either of the Parties, shall be authorized to enforce the provisions of this Agreement.

9. Further Assurances. Each of the Parties agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of the transactions contemplated by this Agreement.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

12. Amendments. This Agreement may be modified or amended, in whole or in part, only by an instrument in writing executed by the Parties.

[Signatures begin on following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**“SUCCESSOR AGENCY”**

IMPERIAL BEACH REDEVELOPMENT  
AGENCY SUCCESSOR AGENCY,  
a public entity

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Andy Hall  
Title: Executive Director

ATTEST:

By: \_\_\_\_\_  
Name: Jacqueline M. Hald  
Title: Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Jennifer M. Lyon  
Title: Successor Agency Counsel

By: \_\_\_\_\_  
Name: Kendall D. Levan  
Kane, Ballmer & Berkman  
Title: Successor Agency Special Counsel

[Signatures continue on following page.]

“CITY”

CITY OF IMPERIAL BEACH,  
a municipal corporation

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Andy Hall  
Title: City Manager

ATTEST:

By: \_\_\_\_\_  
Name: Jacqueline M. Hald  
Title: City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Jennifer M. Lyon  
Title: City Attorney

By: \_\_\_\_\_  
Name: Kendall D. Levan  
Kane, Ballmer & Berkman  
Title: City Special Counsel

**Exhibit A**

2010 Tax Allocation Bonds Official Statement

[behind this page]

## RESOLUTION NO. OB-14-34

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

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

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

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

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

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

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

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

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

**WHEREAS**, H&S Code Section 34179 of AB 26 establishes a seven (7) member local entity with respect to each successor agency with fiduciary responsibilities to holders of enforceable obligations and taxing entities that benefit from distributions of property taxes, and such entity is titled the "oversight board." The oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to H&S Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in H&S Code Sections 34179 through 34181 of AB 26; and

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

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

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

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

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

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

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

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

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

**WHEREAS**, the activity proposed for approval by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity proposed by this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines; and

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

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

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

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

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

**Section 5.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

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

**Section 7.** This Resolution shall take effect upon the date of its adoption and is subject to review by the Department of Finance in accordance with H&S Code Section 34179(h) of the Dissolution Act.

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

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

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**CHAIRPERSON**

**ATTEST:**

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