

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

**A G E N D A**

**OCTOBER 11, 2012**

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

**SPECIAL 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 COMMENT** - 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. RESOLUTION NO. OB-12-12 DISPUTING THE FINDINGS OF THE COUNTY AUDITOR-CONTROLLER IN ITS REVIEW OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) FOR THE PERIOD OF JANUARY 1, 2013 THROUGH JUNE 30, 2013 AND REFERRING THE MATTER TO THE STATE DEPARTMENT OF FINANCE FOR CONSIDERATION.**

Recommendation: Adopt Resolution No. OB-12-12 which:

    1. Disputes the findings of the County Auditor-Controller in its review of the Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2013 through June 30, 2013; and
    2. Refers the matter to the State Department of Finance for consideration.

***Continued on Next Page***

**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.**

**4. REPORTS (Continued)**

**B. TAKING CERTAIN ACTIONS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.6 AND ADOPTION OF RESOLUTION NO. OB-12-11 IN CONNECTION WITH THE DUE DILIGENCE REPORT FOR THE LOW AND MODERATE INCOME HOUSING FUND (LMIHF) PREPARED PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.5.**

Recommendation:

1. Hear continued public comment on the Due Diligence Review for the LMIHF and close the public comment session; and
2. Adopt Resolution Number OB-12-11 (i) reviewing and approving the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF is zero, consistent with the results of the Due Diligence Review for the LMIHF prepared by Lance, Soll & Lunghard, LLP, (ii) authorizing the Successor Agency's retention of the unspent housing bond proceeds in the amount of \$913,452, identified in Attachment B6 of the Due Diligence Review for the LMIHF, pursuant to Procedure 6 in accordance with Health and Safety Code Section 34179.5(c)(5)(B); and (iii) approving related actions.

**5. ADJOURNMENT**

*/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.cityofib.com](http://www.cityofib.com). Go to the Imperial Beach Redevelopment Agency Successor Agency page located under the Government Section.**

**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

**MEETING DATE:** OCTOBER 11, 2012

**SUBJECT:** ADOPTION OF RESOLUTION NO. OB-12-12 DISPUTING THE  
FINDINGS OF THE COUNTY AUDITOR-CONTROLLER IN ITS  
REVIEW OF THE RECOGNIZED OBLIGATION PAYMENT  
SCHEDULE (ROPS) FOR THE PERIOD OF JANUARY 1, 2013  
THROUGH JUNE 30, 2013 AND REFERRING THE MATTER TO  
THE STATE DEPARTMENT OF FINANCE FOR  
CONSIDERATION

---

**BACKGROUND:**

On June 28, 2011, Assembly Bill No. X1 26 ("Dissolution Act") was signed into law by the Governor of California which called for the dissolution of redevelopment agencies throughout the State and established the procedures by which this was to be accomplished. On December 29, 2011, the California State Supreme Court largely upheld the Dissolution Act as constitutional and reformed and extended certain dates, by which certain dissolution actions were to occur under the Dissolution Act, by an additional four months. As a result of the Supreme Court's decision, on February 1, 2012, all California redevelopment agencies were dissolved, including the Imperial Beach Redevelopment Agency (the "Former Agency"), and successor agencies to the former redevelopment agencies were established and were tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the affairs of the former redevelopment agencies.

On January 5, 2012, as part of the wind-down process enacted by the Dissolution Act, the City Council adopted Resolution No. 2012-7136 electing for the City to serve as the successor agency to the Former Agency ("Successor Agency") upon the dissolution of the Former Agency under the Dissolution Act. As also required by the Dissolution Act, a seven-member Oversight Board consisting of representatives of the affected taxing entities, resident representatives of the City of Imperial Beach and staff of the Former Agency was created to oversee the activities of the Successor Agency. It is the duty of the Successor Agency to wind down the fiscal and business activities of the Former Agency and it is the responsibility of the Oversight Board to oversee the activities and actions of the Successor Agency.

On June 27, 2012, the State Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012) as a trailer bill for the Fiscal Year 2012-2013 State

budget package. Although the primary purpose of AB 1484 is to make technical and substantive amendments to the Dissolution Act based on issues that have arisen in the implementation of the Dissolution Act, AB 1484 also imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind-down process of former redevelopment agencies (including the preparation of a due diligence review) (reference hereinafter to the Dissolution Act means Assembly Bill No. X1 26 as amended by AB 1484).

Pursuant to Health and Safety Code (HSC) Section 34177 of AB 26, the Successor Agency prepared a draft Recognized Obligation Payment Schedule ("ROPS") by the required deadline of March 1, 2012, and adopted the draft ROPS on February 15, 2012 for the period ending June 30, 2012. This ROPS, for the period of January 1, 2012 through June 30, 2012, was subsequently modified and approved by the Oversight Board and submitted to the State of California Controller's Office and the State of California Department of Finance by April 15, 2012. Additionally, the Successor Agency adopted the second ROPS covering the period from July 1, 2012 through December 31, 2012, which was also approved by the Oversight Board and transmitted to the State of California Controller's Office and the State of California Department of Finance by April 15, 2012. The Department of Finance did not request review of the First ROPS or the Second ROPS within the statutory period provided in the Dissolution Act.

On June 27, 2012, the State Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012) as a trailer bill for the Fiscal Year 2012-2013 State budget package. Although the primary purpose of AB 1484 is to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 also imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind-down process of former redevelopment agencies.

Pursuant to Section 34177(m) of AB 26 as amended by AB 1484, the Successor Agency was required to submit a third ROPS for the period of January 1, 2013 through June 30, 2013 (the "Third ROPS"), to the Department of Finance and the County Auditor-Controller no later than September 1, 2012. On Wednesday, August 1, 2012, the Successor Agency adopted Resolution Number SA-12-13 approving the Third ROPS and authorizing staff to provide this ROPS to the Oversight Board for review and approval and concurrently to submit a copy to the San Diego County Administrative Officer, the San Diego County Auditor-Controller, and the State Department of Finance.

On August 22, 2012, the Oversight Board adopted Resolution No. OB-12-09 approving the Third ROPS (see Attachment 2). Immediately following the Oversight Board meeting at which the Third ROPS was approved, it was then forwarded to the State Department of Finance (DOF) and to the San Diego County Auditor-Controller and a copy was posted on the Successor Agency's website, ahead of the September 1, 2012 deadline by which it was required to be submitted.

#### **DISCUSSION:**

On October 1, 2012, and pursuant to HSC Section 34177(l)(2)(C), the Successor Agency received a copy of a letter from San Diego County Auditor-Controller Tracy Sandoval to the DOF's Principal Program Budget Analyst, Chris Hill, regarding the County Auditor-Controller's review of the Third ROPS (see Attachment 3). In their letter, the County Auditor-Controller noted several issues it had with items on the Third ROPS. In connection with the issues raised by the County Auditor-Controller, HSC Section 34182.5 provides in part that, if the Oversight Board disputes the County Auditor-Controller's findings, the Oversight Board may refer the matter to the DOF for a determination of what will be approved for inclusion in the Third ROPS. On October 6, 2012, the Successor Agency received a letter from the DOF regarding its review

of the Third ROPS (see Attachment 4). This letter lists several items the DOF is questioning as enforceable obligations on the Third ROPS. Although staff intends to request a Meet and Confer regarding the DOF's determination on our Third ROPS as provided for under HSC Section 34177(m), staff notes the issues raised by the County Auditor-Controller are not specifically addressed in the DOF's letter. However, the DOF's letter does state that the amount of Redevelopment Property Tax Trust Fund approved for payment to the Successor Agency "... will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated payments." It should also be noted that, because the amended Third ROPS forms provided by the DOF included a reconciliation section for estimated versus actual payments made for the First ROPS (January to June 2012), two of the three issues noted by the County Auditor-Controller involved items appearing on the First ROPS.

Staff is recommending, therefore, that the Oversight Board dispute the County Auditor-Controller's findings and refer the matter to the DOF for a determination of what ultimately will be approved for inclusion in the Third ROPS and which may potentially result in a reduction in eligible funds to be distributed to the Successor Agency by the County Auditor-Controller from the Redevelopment Property Tax Trust Fund on January 2, 2013. Staff recommends this action based on the three issues raised in the County Auditor-Controller's October 1, 2012 letter for the following specific reasons:

- **COUNTY FINDING:** ROPS I, page 5, line item 25, section 33676 pass-through payment estimate of \$576,814 versus actual payment of \$2,025,415; It appears that the Successor Agency included in this estimate a portion of pass-through obligations related to fiscal year 2009-10 and 2010-11. Since the County Auditor made the pass-through payments for FY 2011-12 on June 1, 2012 as required by law, and HSC Section 34177(l)(3) specifies that obligations due prior January 1, 2012 shall be made by the SA from property tax revenues received in the spring of 2010 and 2011 tax distribution, and from other revenues and balances transferred to the SA, adjustments for these items are required.

**RESPONSE:** This item deals with required pass-through payments to other affected taxing entities. In June of 2010, the County lost a lawsuit requiring an increased payment of tax increment to the school districts. Although the Former Agency requested and the County Auditor promised a revised pass-through payment formula for the school districts, no such formula was ever provided. During that time, the Former Agency advised the County that it would withhold the pass-through payments until the revised formula was provided. During Fiscal Year 2010-2011, Supplemental Educational Revenue Augmentation Fund ("SERAF") payments were mandated to be paid to the State by the Former Agency in the total amount of \$3.4 million (a lawsuit filed to challenge this taking of redevelopment funds has yet to be ruled upon). This left the Former Agency with more pass-through liabilities than cash on hand. In September 2011, therefore, the Former Agency had to borrow money from temporary pooled investment funds to pay the required pass-through payments for 2009-2010. In December 2011, the Former Agency received its tax increment for Fiscal Year 2011-2012 and, as had been typical in prior years when liabilities exceeded cash on hand, had expected to reimburse the borrowed pooled investment funds used to make the required pass-through payments in September 2011.

With the dissolution of redevelopment agencies as of February 1, 2012, the Successor Agency immediately identified the lack of funds with which to pay its enforceable obligations and, pursuant to HSC Section 34183(b), sent a letter to the County Auditor-Controller on March 29, 2012, advising them that the Successor Agency had insufficient funds with which to pay its enforceable obligations for the period ending June 30, 2012

and requesting a loan from the County to make those payments as allowed under the Dissolution Act (see Attachment 5). Having received no reply and growing more concerned about funding shortfalls for the next six-month period, staff sent another letter to the County Auditor-Controller on April 30, 2012, once again providing notification of insufficient funds for the period ending December 31, 2012 as provided for by HSC Section 34183(b)(see Attachment 6). On May 4, 2012, the County Auditor-Controller sent staff a letter (though it is unclear to which letter they were responding) and requested that documentation supporting our position be submitted to them by May 11, 2012 (see Attachment 7). Staff provided the requested information and then met with County Auditor-Controller staff to review the information provided to them. No further action or response was ever provided by the County Auditor-Controller to the Successor Agency.

Unfortunately, of the many retroactive clauses in the Dissolution Act, Section 34177(l)(3) does state that obligations due prior to January 1, 2012 shall be made by the Successor Agency from property tax revenues received in the spring of 2010 and 2011 tax distribution. This clause, however, ignores the fact that our Former Agency was essentially forced into paying its pass-through obligations in September 2011 with temporary pooled investment funds and then reimbursing these payments with tax increment received subsequent to payment of those obligations. As stated above, this was due to the State's SERAF "taking" of \$3.4 million of redevelopment funds thereby expending any and all tax increment revenues from which to pay the required pass-through payments due in September 2011. When it became apparent that the Successor Agency would have insufficient funds with which to pay its enforceable obligations, including the pass-through payments, staff notified the County Auditor-Controller. Had the Former Agency simply elected not to pay the pass-through payments in September 2011, the County Auditor-Controller would ultimately have had to use the Redevelopment Property Tax Trust Fund (RPTTF) to do so. Because the Former Agency elected instead to comply with state law and make the required pass-through payments with borrowed funds, the Successor Agency should not be penalized for this recognized obligation. The inclusion of these pass-through payments on the First ROPS totaling \$2,025,415, and their repayment from the RPTTF, therefore, were necessary to pay these required obligations, regardless of whether or not the subsequently-adopted Dissolution Act provides for it.

Finally, the comment in the County Auditor-Controller's letter that "adjustments for these items are required" is most concerning as it appears that the County Auditor-Controller expects to reduce our RPTTF distributions by the amount they identified under actual payment (\$2,025,415). Should this occur, the Successor Agency would be unable to make the required bond debt payments on our tax allocation bonds. The Dissolution Act is quite clear and specific that these enforceable obligations should be given the highest priority. Specific provisions also make it clear that the Dissolution Act did not intend to change the directional flow of payments of former tax increment or cause defaults on enforceable obligations of the Former Agency and the Successor Agency, but rather intended that all indebtedness of the Former Agency and enforceable obligations of the Successor Agency be honored prior to the use of property taxes for other purposes. HSC Section 34175(a) further provides that pledges of revenues associated with enforceable obligations of the Former Agency are to be honored and the dissolution of the Former Agency shall not affect either the pledge, the legal existence of that pledge or the stream of revenues available to meet the requirements of that pledge. This obligation of the Former Agency, therefore, should clearly be honored.

- **COUNTY FINDING:** HSC Section 34171(b) limits the fiscal year 2012-2013 administrative cost allowance to up to three percent of the property tax allocated to the

SA or \$250,000, whichever is greater. For the six-month period, January to June 2013, the SA anticipates administrative allowance funded with RPTTF in the amount of \$270,510. This amount exceeds the three percent of the anticipated Enforceable obligations funded with RPTTF in the amount of \$5,774,108. When calculating the administrative allowance for ROPS III, the SA must take into account the RORF (Redevelopment Obligation Retirement Fund) and administrative allowance distributions it received for the July to December 2012 ROPS (ROPS II) to ensure the annual cap is not exceeded.

**RESPONSE:** HSC Section 34171(a) separately defines the “administrative budget” as “the budget for administrative costs for the successor agency as provided for under section 34177” as opposed to the “administrative cost allowance” which is discussed above. HSC Section 34177(j) requires the preparation of an administrative budget (with submittal to the oversight board for approval) which includes: 1) the estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period, 2) the proposed sources of payment for the costs, and 3) any proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity. HSC Section 34177(k) states that the SA shall provide administrative cost estimates from the approved administrative budget that are to be paid from the RPTTF to the County Auditor-Controller for each six-month fiscal period. The Successor Agency has prepared the administrative budget, it has been approved by the Oversight Board and, as there are no other funds from which to pay for these administrative costs, nor are there any arrangements with other agencies to provide any administrative or operations services, we have identified the source for payment of these administrative costs as the administrative cost allowance and the RPTTF. This is provided for under Section 34177(l)(1) which further states that, for each recognized obligation (in this case the “administrative budget”), the Recognized Obligation Payment Schedule shall identify one or more of the following sources of payment:

- (A) Low and Moderate Income Housing Fund
- (B) Bond proceeds
- (C) Reserve balances
- (D) Administrative cost allowance
- (E) The RPTTF, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of this part.
- (F) Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency, as approved by the oversight board in accordance with this part.

For the administrative budget line item of the Third ROPS, the sources of funding identified in our Third ROPS include both the administrative cost allowance (D above) and the RPTTF (E above) as there are no other funding sources available with which to pay for these administrative costs necessary to support the Successor Agency. Therefore, of the \$270,510 requested, \$250,000 should be paid as our administrative cost allowance and the remainder, which includes legal services necessary to support the Successor Agency, should be paid from the RPTTF as specifically provided for under HSC Section 34177(l)(1).

- **COUNTY FINDING:** Per communication with DOF, the following ROPS I items should be paid from administrative allowance or other source; however, these items were actual [sic] paid from RPTTF.

- Page 3, line item 3, RDA accrued liabilities, estimate of \$203,233 versus payment of \$203,233
- Page 3, line item 5, RDA 30 layoff notice, estimate of \$28,646 versus payment of \$28,646
- Page 3, line item 14, city service agreement, estimate of \$200,000 versus payment of \$156,046
- Page 15, line item 15, hotel DDA compliance estimate of \$5,000 versus payment of \$1,978
- Page 17, line item 17, legal, estimate of \$60,000 versus payment of \$48,144

**RESPONSE:** Most important to note here is that the “communication with DOF” over the First ROPS described above occurred between the County Auditor-Controller and the DOF without required notification to the Successor Agency. Additionally, this communication occurred after the First ROPS was statutorily “deemed effective” and approved as a matter of law as it was not objected to by the DOF within the statutory timeframes specified in the Dissolution Act. The DOF’s approval of the First and Second ROPS was also specifically testified to by DOF Director Ana Matosantos in Superior Court Opposition Papers filed by the DOF on May 30, 2012, which stated emphatically that “for the City of Imperial Beach, DOF approved everything on the City’s submitted ROPS” (Case No. 34-2012-80001154 – see Attachment 8). Several additional court documents prepared in this case on behalf of both the County Auditor-Controller and the DOF restate the DOF’s position that all items on the First and Second ROPS were approved for payment from the RPTTF (these documents will be provided as Last Minute Agenda Items). The Court’s dismissal of this proceeding was due in large part to the DOF’s stated approval of both the First and Second ROPS. It appears, therefore, that the County Auditor is relying upon an Exhibit (“Exhibit 12”) prepared by the DOF, and later amended by the DOF after the June 1, 2012 property tax distribution was made, which listed enforceable obligations for which RPTTF was requested and those to which the DOF objected for the First and Second ROPS of all successor agencies to now question items on our First ROPS, even though all enforceable obligations of both the First and Second ROPS and the use of RPTTF to fund them they had already been approved by the DOF. The County relying upon Exhibit 12 to question items on our First ROPS is not provided for under the Dissolution Act as all items had already been approved for payment through the RPTTF.

Notwithstanding the above, staff’s response to the specific items noted are as follows:

**COUNTY FINDING:**

- Page 3, line item 3, RDA accrued liabilities, estimate of \$203,233 versus payment of \$203,233
- Page 3, line item 5, RDA 30 layoff notice, estimate of \$28,646 versus payment of \$28,646

**RESPONSE:** The accrued liabilities are costs of the Former Agency incurred prior to the dissolution of the Former Agency. The DOF has approved accrued liabilities related to pensions and workers compensation obligations. The vacation, sick leave, and layoff costs are equivalent Former Agency accrued liabilities for which the Successor Agency is now responsible. As such, they must be treated as statutory enforceable obligations of the Successor Agency in accordance with HSC Section 34171(d)(1)(C) as they apply specifically to Former Agency employees that were terminated as a result of the dissolution of the RDA.

**COUNTY FINDING:**

- Page 3, line item 14, city service agreement, estimate of \$200,000 versus payment of \$156,046

**RESPONSE:** This agreement was effective as of July 1, 2007, and, therefore, constitutes an enforceable obligation pursuant to HSC Section 34171(d)(1)E) of the Dissolution Act. In addition, the services assist the Successor Agency in its wind-down of Former Agency affairs, particularly with specific projects, and therefore constitute “enforceable obligations” pursuant to HSC Section 34171(d)(1)(F) and not “administrative costs” as defined by the Dissolution Act. HSC Section 34171(b) further provides that “employee costs associated with work on specific project implementation activities including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and shall not constitute administrative costs.” Therefore, the specific project implementation costs are not considered administrative costs of the Successor Agency.

**COUNTY FINDING:**

- Page 15, line item 15, hotel DDA compliance estimate of \$5,000 versus payment of \$1,978

**RESPONSE:** These are project-specific costs associated with the Former Agency’s obligations to ensure Developer compliance with obligations set forth in a Disposition and Development Agreement entered into between the Former Agency and Imperial Coast, LLP, in December of 2010, prior to the Dissolution Act. This item constitutes an enforceable obligation. Further, agreements or contracts necessary for the costs of maintaining assets of the Former Agency are enforceable obligations pursuant to HSC Section 34171(d)(1)(F). This item is specifically excluded from the definition of and payment by the administrative cost allowance and does not constitute an administrative cost as a cost for maintaining assets pursuant to HSC Section 34171(b). In addition, HSC Section 34171(b) states that “employee costs associated with work on specific project implementation activities including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and shall not constitute administrative costs.” Therefore, these costs are specific project implementation costs and should not be considered administrative costs of the Successor Agency. By definition, therefore, these costs are not administrative costs but are project-specific costs related to an approved enforceable obligation and are eligible for payment from the RPTTF.

**COUNTY FINDING:**

- Page 17, line item 17, legal, estimate of \$60,000 versus payment of \$48,144

**RESPONSE:** Changes in legal processes, guidelines and legislation (i.e., adoption of AB 1484) regarding the wind-down of redevelopment require constant legal consultation for which no funds are available to the Successor Agency. Each of these Legal Services Agreements was executed by the Former Agency prior to the Dissolution Act and, therefore, constitute an enforceable obligation pursuant to HSC Section 34171(d)(1)E) of the Dissolution Act. In addition, the services assist the Successor Agency in its wind-down of Former

Agency affairs, particularly with its Projects, and therefore constitute enforceable obligations pursuant to HSC Sections 34171(d)(1)(F) and 34177.3(b) and not administrative costs under the Dissolution Act. In addition, HSC Section 34171(b) states that "employee costs associated with work on specific project implementation activities including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and shall not constitute administrative costs." Therefore, these specific project implementation costs are not considered administrative costs of the Successor Agency.

As stated above, staff is recommending that the Oversight Board dispute the County Auditor-Controller's findings and refer the matter to the DOF for a determination of what ultimately will be approved for inclusion in the Third ROPS and may result in a reduction in funds distributed from the RPTTF by the County to the Successor Agency on January 2, 2013 and thereafter. Such reduction in funds will potentially cause defaults on Former Agency bond issuances and otherwise potentially render the Successor Agency unable to perform its obligations under the Dissolution Act.

**ENVIRONMENTAL DETERMINATION:**

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

**FISCAL IMPACT:**

As noted above, failure to successfully dispute the issues raised by the County Auditor-Controller in their letter dated October 1, 2012, could lead to significant and negative fiscal impacts to the Successor Agency up to and including default on outstanding tax allocation bond debt as well as the inability to pay other enforceable obligations already approved for payment from the RPTTF by the DOF and to perform its obligations under the Dissolution Act.

**DIRECTOR'S RECOMMENDATION:**

Staff recommends that the Oversight Board to the Imperial Beach Redevelopment Agency Successor Agency adopt Resolution No. OB-12-12 which:

1. Disputes the findings of the County Auditor-Controller in its review of the Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2013 through June 30, 2013; and
2. Refers the matter to the State Department of Finance for consideration.

  
\_\_\_\_\_  
Gregory Wade, Deputy Director

Attachments:

1. Resolution No. OB-12-12
2. Resolution No. OB-12-09
3. October 1, 2012 Letter from County Auditor-Controller to State Department of Finance
4. October 6, 2012 Letter from the Department of Finance Regarding the Third ROPS

5. March 29, 2102 Letter to County Auditor-Controller – Notification of Insufficient Funds
6. April 30, 2012 Letter to County Auditor-Controller – Notification of Insufficient Funds
7. May 4, 2012 Letter from County Auditor-Controller
8. Superior Court Opposition Papers filed by the DOF dated May 30, 2012

RESOLUTION NO. OB-12-12

RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY DISPUTING THE FINDINGS OF THE COUNTY AUDITOR-CONTROLLER IN ITS REVIEW OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) FOR THE PERIOD OF JANUARY 1, 2013 THROUGH JUNE 30, 2013

**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 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 ("Health and Safety 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 Health and Safety 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 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 is 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; and

**WHEREAS**, Health and Safety Code Section 34179 of AB 26 as amended by AB 1484

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 Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of AB 26 as amended by AB 1484; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177 of AB 26, the Successor Agency (i) prepared its draft Recognized Obligation Payment Schedule ("ROPS") by March 1, 2012, (ii) adopted the draft ROPS on February 15, 2012 for the period ending June 30, 2012, as modified administratively by the Executive Director, (iii) submitted the draft ROPS to the State of California Controller's Office and the State of California Department of Finance ("Department of Finance") by April 15, 2012 for the period of January 1, 2012 through June 30, 2012, (iv) amended the draft ROPS as the first ROPS for submission to the State Controller's Office and the Department of Finance by April 15, 2012 and revised the ROPS to reflect the time period of January 1, 2012 through June 30, 2012 ("First ROPS"), and (v) adopted the second ROPS covering the period from July 1, 2012 through December 31, 2012 ("Second ROPS"); and

**WHEREAS**, in accordance with Health and Safety Code Sections 34177(l)(2)(B) and 34180(g) of AB 26, on April 11, 2012, the Oversight Board approved the First ROPS pursuant to Resolution No. OB-12-03 as proposed by the Successor Agency, and on April 11, 2012, the Oversight Board approved the Second ROPS pursuant to Resolution OB-12-04 as proposed by the Successor Agency; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177 of AB 26 as amended by AB 1484, the Successor Agency adopted the third ROPS covering the period from January 1, 2013 through June 30, 2013 ("Third ROPS") on August 1, 2012 pursuant to Resolution No. SA-12-13; and

**WHEREAS**, in accordance with Health and Safety Code Sections 34177(l)(2)(B) and 34180(g) of AB 26 as amended by AB 1484, the Third ROPS was submitted to the Oversight Board for review and approval. In this regard, as required by Health and Safety Code Section 34177(l)(2)(B), the Successor Agency also submitted a copy of the Third ROPS to the County Administrative Officer, the County Auditor-Controller, and the Department of Finance at the same time that the Successor Agency submitted the Third ROPS to the Oversight Board for approval; and

**WHEREAS**, on August 22, 2012, the Oversight Board reviewed and approved the Third ROPS as required by Health and Safety Code Sections 34177(l)(2)(B) and 34180(g) of AB 26 as amended by AB 1484; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(m) of AB 26 as amended by AB 1484, the Successor Agency submitted the Third ROPS for the period of January 1, 2013 through June 30, 2013, after its approval by the Oversight Board, to the Department of Finance and the County Auditor-Controller on August 22, 2012; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(l)(2)(C) of AB 26 as amended by AB 1484, a copy of the Third ROPS as approved by the Oversight Board was submitted to the County Auditor-Controller and both the State Controller's Office and the Department of Finance on August 22, 2012 and was posted on the Successor Agency's internet website; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(m)(1) of AB 26 as amended by AB 1484, the Successor Agency submitted a copy of the Third ROPS to the Department of Finance electronically on August 22, 2012, the Successor Agency having completed the Third ROPS in the manner provided by the Department of Finance; and

**WHEREAS**, pursuant to Health and Safety Code Section 34183(a)(2) of AB 26 as amended by AB 1484, the County is required to make a payment of property tax revenues (i.e. former tax increment funds) to the Successor Agency by January 2, 2013 for payments to be made toward recognized obligations listed on the Third ROPS for the period of January 1, 2013 through June 30, 2013; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(l)(3) of AB 26 as amended by AB 1484, the ROPS shall be forward looking to the next six (6) months; and

**WHEREAS**, according to Health and Safety Code Section 34177(l)(1) of AB 26 as amended by AB 1484, for each recognized obligation, the ROPS shall identify one or more of the following sources of payment: (i) Low and Moderate Income Housing Funds, (ii) bond proceeds, (iii) reserve balances, (iv) administrative cost allowance, (v) the Redevelopment Property Tax Trust Fund but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of Part 1.85 of AB 26 as amended by AB 1484, and (vi) other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former Redevelopment Agency as approved by the Oversight Board in accordance with Part 1.85 of AB 26 as amended by AB 1484; and

**WHEREAS**, it is the intent of AB 26 as amended by AB 1484 that the ROPS serve as the designated reporting mechanism for disclosing the Successor Agency's bi-annual payment obligations by amount and source and that the County Auditor-Controller will be responsible for ensuring that the Successor Agency receives revenues sufficient to meet the requirements of the ROPS during each bi-annual period; and

**WHEREAS**, on October 1, 2012, the Successor Agency received a copy of a letter from the County Auditor-Controller to the State Department of Finance regarding its review of the Third ROPS covering the period of January 1, 2013 through June 30, 2013, as approved by the Oversight Board (the "County Letter"); and

**WHEREAS**, the County Letter noted issues regarding items identified on the Third ROPS; and

**WHEREAS**, in connection with the issues raised by the County Auditor-Controller in the County Letter, Health and Safety Code Section 34182.5 provides that, if the Oversight Board disputes the County Auditor-Controller's findings, the Oversight Board may refer the matter to the Department of Finance for a determination of what will be approved for inclusion in the Third ROPS; 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 adoption of this Resolution is not intended to and shall not constitute a waiver by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26 or AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26 or AB 1484, and any and all related legal and factual issue, and the Successor Agency expressly reserved any and all rights, privileges, and defenses available under law and equity.
- Section 3.** The Oversight Board hereby disputes the issues noted and the findings made by the County Auditor-Controller in their letter to the Department of Finance dated October 1, 2012.
- Section 4.** The Oversight Board hereby refers thos matter to the Department of Finance for a determination of what will be approved for inclusion in the Third ROPS.
- Section 5.** The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.
- Section 6.** The Oversight Board determines that this Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.
- Section 7.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 8.** This Resolution shall take effect upon the date of its adoption.

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 11<sup>th</sup> day of October 2012, by the following vote:

**AYES: BOARD MEMBERS:**

**NOES: BOARD MEMBERS:**

**ABSENT: BOARD MEMBERS:**

**DISQUALIFIED: BOARD MEMBERS:**

---

**MAYDA WINTER, CHAIRPERSON**

**ATTEST:**

---

**JACQUELINE M. HALD, MMC  
SECRETARY**

**EXHIBIT "A"**

**IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE  
January 1, 2013 through June 30, 2013  
("Third ROPS")**

**Approved on August 22, 2012**

**(See Attachment)**

## RESOLUTION NO. OB-12-09

**RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE THIRD RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD OF JANUARY 1, 2013 THROUGH JUNE 30, 2013 AND APPROVING CERTAIN RELATED ACTIONS PURSUANT TO PART 1.85 OF THE CALIFORNIA HEALTH AND SAFETY CODE**

**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 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 ("Health and Safety 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 Health and Safety 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 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 is 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; and

**WHEREAS**, Health and Safety Code Section 34179 of AB 26 as amended by AB 1484 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 Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of AB 26 as amended by AB 1484; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177 of AB 26, the Successor Agency (i) prepared its draft Recognized Obligation Payment Schedule ("ROPS") by March 1, 2012, (ii) adopted the draft ROPS on February 15, 2012 for the period ending June 30, 2012, as modified administratively by the Executive Director, (iii) submitted the draft ROPS to the State of California Controller's Office and the State of California Department of Finance ("Department of Finance") by April 15, 2012 for the period of January 1, 2012 through June 30, 2012, (iv) amended the draft ROPS as the first ROPS for submission to the State Controller's Office and the Department of Finance by April 15, 2012 and revised the ROPS to reflect the time period of January 1, 2012 through June 30, 2012 ("First ROPS"), and (v) adopted the second ROPS covering the period from July 1, 2012 through December 31, 2012 ("Second ROPS"); and

**WHEREAS**, in accordance with Health and Safety Code Sections 34177(l)(2)(B) and 34180(g) of AB 26, on April 11, 2012, the Oversight Board approved the First ROPS pursuant to Resolution No. OB-12-03 as proposed by the Successor Agency, and on April 11, 2012, the Oversight Board approved the Second ROPS pursuant to Resolution OB-12-04 as proposed by the Successor Agency; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177 of AB 26 as amended by AB 1484, the Successor Agency adopted the third ROPS covering the period from January 1, 2013 through June 30, 2013 ("Third ROPS") on August 1, 2012 pursuant to Resolution No. SA-12-13; and

**WHEREAS**, the Third ROPS is now being submitted to the Oversight Board for review and approval in accordance with Health and Safety Code Sections 34177(l)(2)(B) and 34180(g) of AB 26 as amended by AB 1484. In this regard, as required by Health and Safety Code Section 34177(l)(2)(B), the Successor Agency has also submitted a copy of the Third ROPS to the County Administrative Officer, the County Auditor-Controller, and the Department of Finance at the same time that the Successor Agency has submitted the Third ROPS to the Oversight Board for approval; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(m) of AB 26 as amended by AB 1484, the Successor Agency is required to submit the Third ROPS for the period of January 1, 2013 through June 30, 2013, after its approval by the Oversight Board, to the Department of Finance and the County Auditor-Controller no later than September 1, 2012; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(l)(2)(C) of AB 26 as amended by AB 1484, a copy of the Third ROPS as approved by the Oversight Board shall be submitted to the County Auditor-Controller and both the State Controller's Office and the Department of Finance and shall be posted on the Successor Agency's internet website; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(m)(1) of AB 26 as amended by AB 1484, the Successor Agency shall submit a copy of the Third ROPS to the Department of Finance electronically and the Successor Agency shall have completed the Third ROPS in the manner provided by the Department of Finance; and

**WHEREAS**, pursuant to Health and Safety Code Section 34183(a)(2) of AB 26 as amended by AB 1484, the County is required to make a payment of property tax revenues (i.e. former tax increment funds) to the Successor Agency by January 2, 2013 for payments to be made toward recognized obligations listed on the Third ROPS for the period of January 1, 2013 through June 30, 2013; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(l)(3) of AB 26 as amended by AB 1484, the ROPS shall be forward looking to the next six (6) months; and

**WHEREAS**, according to Health and Safety Code Section 34177(l)(1) of AB 26 as amended by AB 1484, for each recognized obligation, the ROPS shall identify one or more of the following sources of payment: (i) Low and Moderate Income Housing Funds, (ii) bond proceeds, (iii) reserve balances, (iv) administrative cost allowance, (v) the Redevelopment Property Tax Trust Fund but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of Part 1.85 of AB 26 as amended by AB 1484, and (vi) other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former Redevelopment Agency as approved by the Oversight Board in accordance with Part 1.85 of AB 26 as amended by AB 1484; and

**WHEREAS**, it is the intent of AB 26 as amended by AB 1484 that the ROPS serve as the designated reporting mechanism for disclosing the Successor Agency's bi-annual payment obligations by amount and source and that the County Auditor-Controller will be responsible for ensuring that the Successor Agency receives revenues sufficient to meet the requirements of the ROPS during each bi-annual period; and

**WHEREAS**, the Third ROPS covering the period of January 1, 2013 through June 30, 2013, as adopted by the Successor Agency is attached hereto as Exhibit "A"; and

**WHEREAS**, the Third ROPS is consistent with the requirements of the Health and Safety Code and other applicable law; and

**WHEREAS**, the Third ROPS contains the schedules for payments on enforceable obligations required for the applicable six-month period and sources of funds for repayment as required pursuant to Health and Safety Code Section 34177(l); and

**WHEREAS**, the Third ROPS includes an obligation pertaining to the estimated cost to the Successor Agency in the amount of \$40,000 to retain a licensed accountant to perform services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5; and

**WHEREAS**, among other obligations listed on the Third ROPS, the cost to the Successor Agency in the estimated amount of \$40,000 to retain a licensed accountant to perform services pursuant to an agreement to be entered into by the Successor Agency and the selected accountant relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5 is included on the Third ROPS. Upon the Oversight Board's approval and effectiveness of the Third ROPS, such item will constitute an enforceable obligation of the Successor Agency pursuant to Health and Safety Code Sections 34171(d)(1)(C), 34171(d)(1)(F), and 34177.3(b), payable from the property tax revenues available to be allocated to the Successor Agency by the County to pay enforceable obligations pursuant to a valid ROPS; and

**WHEREAS**, among other obligations listed on the Third ROPS, the Successor Agency

approved the Successor Agency to reenter into the former Redevelopment Agency Reimbursement Agreement with the City of Imperial Beach, dated January 1, 2007, to reimburse the City for administrative and operational costs incurred by the City on behalf of the Successor Agency and the Successor Agency included the Reimbursement Agreement on the Third ROPS pursuant to Health and Safety Code Sections 34171(d)(1)(F) and 34178(a). Upon the Oversight Board's approval of this action of the Successor Agency pursuant to Health and Safety Code Sections 34171(d)(1)(F), 34178(a), and 34180(h) and upon the Oversight Board's approval and effectiveness of the Third ROPS, such Reimbursement Agreement will constitute an enforceable obligation of the Successor Agency payable from the property tax revenues available to be allocated to the Successor Agency by the County to pay enforceable obligations pursuant to a valid ROPS; and

**WHEREAS**, among other obligations listed on the Third ROPS, the Successor Agency included on the Third ROPS the use and commitment of available housing bond proceeds in the total amount of \$913,000 derived from a 2003 Bond issuance ("Excess Housing Bonds Proceeds") toward the Clean & Green Program in the approximate amount of \$380,000 and toward the Habitat for Humanity Project in the approximate amount of \$533,000 as designated in writing on July 24, 2012 by the City of Imperial Beach Housing Authority ("Housing Authority"), serving as the successor housing entity to the Redevelopment Agency pursuant to AB 26 as amended by AB 1484, to the Successor Agency pursuant to Health and Safety Code Section 34176(g)(1); and

**WHEREAS**, pursuant to Health and Safety Code Section 34176(g)(1)(B) of AB 26 as amended by AB 1484, review of the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds by the Successor Agency, the Oversight Board and the Department of Finance shall be limited to a determination that the Housing Authority's designations of the use and commitment of such proceeds are consistent with the Housing Bonds covenant obligations, including requirements relating to tax status, and that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes. Upon the Oversight Board's determination pursuant to Section 34176(g)(1)(B) and the Oversight Board's approval and effectiveness of the Third ROPS, the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds toward the Clean & Green Program in the approximate amount of \$380,000 and toward the Habitat for Humanity Project in the approximate amount of \$533,000 will constitute an enforceable obligation of the Successor Agency payable from the Excess Housing Bonds Proceeds; and

**WHEREAS**, among other obligations listed on the Third ROPS, the Successor Agency included on the Third ROPS certain loans/advances made from Low and Moderate Income Housing Tax Increment Funds to pay enforceable obligations approved on the First ROPS and the Second ROPS where the Successor Agency had no other funding sources available to pay said enforceable obligations including, without limitation, payment of the May 2012 debt service payments on Bond Issuances. Pursuant to Health and Safety Code Section 34171(d)(1)(G) in pertinent part, amounts borrowed from, or payments owing to, the Low and Moderate Income Housing Fund may constitute enforceable obligations, provided that the Oversight Board approves the repayment schedule. Upon the Oversight Board's approval of the repayment schedule of the loans/advances made from Low and Moderate Income Housing Tax Increment Funds pursuant to Health and Safety Code Sections 34171(d)(1)(G) and 34180(a) and the Oversight Board's approval and effectiveness of the Third ROPS, the Successor Agency's loans/advances made from Low and Moderate Income Housing Tax Increment Funds will constitute enforceable obligations of the Successor Agency payable from the property tax revenues available to be allocated to the Successor Agency by the County to pay enforceable obligations pursuant to a valid ROPS; and

**WHEREAS**, pursuant to Health and Safety Code Section 34177(m), the Third ROPS as approved by the Oversight Board shall be submitted to the Department of Finance and the County Auditor-Controller by September 1, 2012 and subsequent six-month period ROPS as approved by the Oversight Board shall be submitted to the Department of Finance and County Auditor-Controller no fewer than ninety (90) days before the date of property tax distribution. Section 34177(m) further provides that the Department of Finance shall make its determination of the enforceable obligations and the amounts and funding sources of enforceable obligations no later than forty-five (45) days after the ROPS is submitted and that the Successor Agency may, within five (5) business days of the Department of Finance's determination, request an additional review by the Department of Finance and an opportunity to meet and confer on disputed items. In the event of a meet and confer and request for additional review, the meet and confer period may vary but the Department of Finance shall notify the Successor Agency and the County Auditor-Controller as to the outcome of its review at least fifteen (15) days before the date of property tax distribution; and

**WHEREAS**, 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 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; 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 adoption of this Resolution is not intended to and shall not constitute a waiver by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26 or AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26 or AB 1484, and any and all related legal and factual issue, and the Successor Agency expressly reserved any and all rights, privileges, and defenses available under law and equity.
- Section 3.** The Oversight Board hereby approves and adopts the Third ROPS, in substantially the form attached to this Resolution as Exhibit "A," pursuant to Health and Safety Code Sections 34177(l) and 34180(g) of AB 26 as amended by AB 1484.
- Section 4.** As part of the approval of the Third ROPS, the Oversight Board hereby approves the cost to the Successor Agency in the estimated amount of \$40,000 to retain a licensed accountant to perform services pursuant to

an agreement to be entered into by the Successor Agency and the selected accountant relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5 and such item shall constitute an enforceable obligation of the Successor Agency, pursuant to Health and Safety Code Sections 34171(d)(1)(C), 34171(d)(1)(F), and 34177.3(b) of AB 26 as amended by AB 1484.

**Section 5.** As part of the approval of the Third ROPS, the Oversight Board hereby approves the Successor Agency reentering into the former Redevelopment Agency Reimbursement Agreement with the City of Imperial Beach, dated January 1, 2007, to reimburse the City for administrative and operational costs incurred by the City on behalf of the Successor Agency and such Reimbursement Agreement shall constitute an enforceable obligation of the Successor Agency and such Reimbursement Agreement shall constitute an enforceable obligation of the Successor Agency, pursuant to Health and Safety Code Sections 34171(d)(1)(F), 34178(a), and 34180(h) of AB 26 as amended by AB 1484.

**Section 6.** The Oversight Board has rendered, pursuant to Resolution No. OB-12-08, its determination pursuant to Health and Safety Code Section 34176(g)(1)(B), to wit: that the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds are consistent with the Housing Bonds covenant obligations, including requirements relating to tax status, and that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes. As part of the approval of the Third ROPS, the Oversight Board hereby acknowledges and agrees that the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds toward the Clean & Green Program in the approximate amount of \$380,000 and toward the Habitat for Humanity Project in the approximate amount of \$533,000 shall constitute an enforceable obligation of the Successor Agency, pursuant to Health and Safety Code Section 34176(g) of AB 26 as amended by AB 1484.

**Section 7.** As part of the approval of the Third ROPS, the Oversight Board hereby approves the repayment of certain loans/advances made from Low and Moderate Income Housing Tax Increment Funds to pay enforceable obligations approved on the First ROPS and the Second ROPS where the Successor Agency had no other funding sources available to pay said enforceable obligations including, without limitation, payment of the May 2012 debt service payments on Bond Issuances, and such loans/advances shall constitute enforceable obligations of the Successor Agency, pursuant to Health and Safety Code Sections 34171(d)(1)(G) and 34180(a) of AB 26 as amended by AB 1484.

**Section 8.** The Oversight Board hereby directs the Successor Agency to submit copies of the Third ROPS approved by this Resolution as required under AB 26 as amended by AB 1484, in the method required, and in a manner to avoid a late submission or accrual of any penalties. In this regard, The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to: (i) submit the Third ROPS, as approved by the Oversight Board, to the Department of Finance (electronically) and the



**EXHIBIT "A"**

**IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE  
January 1, 2013 through June 30, 2013  
("Third ROPS")**

**Approved on August 22, 2012**

**(See Attachment)**

**Successor Agency Contact Information**

Name of Successor Agency: Imperial Beach  
County: San Diego

Primary Contact Name: Greg Wade  
Primary Contact Title: Deputy Director  
Address: 825 Imperial Beach Blvd, Imperial  
Beach, CA 91932  
Contact Phone Number: 619-628-1354  
Contact E-Mail Address: gwade@cityofib.org

Secondary Contact Name: Gary Brown  
Secondary Contact Title: Executive Director  
Secondary Contact Phone Number: 619-423-0314  
Secondary Contact E-Mail Address: gbrown@cityofib.org

**SUMMARY OF RECOGNIZED OBLIGATION PAYMENT SCHEDULE**  
 Filed for the January 1, 2013 to June 30, 2013 Period

Name of Successor Agency: Imperial Beach

	Total Outstanding Debt or Obligation
<b>Outstanding Debt or Obligation</b>	<b>\$ 111,583,105</b>
<b>Current Period Outstanding Debt or Obligation</b>	<b>Six-Month Total</b>
A Available Revenues Other Than Anticipated RPTTF Funding	913,000
B <u>Anticipated</u> Enforceable Obligations Funded with RPTTF	5,774,108
C <u>Anticipated</u> Administrative Allowance Funded with RPTTF	270,510
D Total RPTTF Requested (B + C = D)	6,044,618
Total Current Period Outstanding Debt or Obligation (A + B + C = E) <i>Should be the same amount as ROPS form six-month total</i>	\$ 6,957,618
E Enter Total Six-Month Anticipated RPTTF Funding <i>(Obtain from county auditor-controller)</i>	3,400,000
F Variance (E - D = F) <i>Maximum RPTTF Allowable should not exceed Total Anticipated RPTTF Funding</i>	\$ (2,644,618)
<b>Prior Period (January 1, 2012 through June 30, 2012) Estimated vs. Actual Payments</b> (as required in HSC section 34186 (a))	
G Enter Estimated Obligations Funded by RPTTF <i>(Should be the lesser of Finance's approved RPTTF amount including admin allowance or the actual amount distributed)</i>	3,420,215
H Enter Actual Obligations Paid with RPTTF	3,205,954
I Enter Actual Administrative Expenses Paid with RPTTF	250,000
J Adjustment to Redevelopment Obligation Retirement Fund (G - (H + I) = J)	-
<b>K Adjusted RPTTF</b> <i>(The total RPTTF requested shall be adjusted if actual obligations paid with RPTTF are less than the estimated obligation amount.)</i>	\$ 6,044,618

Certification of Oversight Board Chairman:  
 Pursuant to Section 34177(m) of the Health and Safety code,  
 I hereby certify, based on my information and belief,  
 that the above is a true and accurate Recognized  
 Obligation Payment Schedule for the above named agency.

\_\_\_\_\_  
 Name Title  
 \_\_\_\_\_  
 Signature Date

**Note: Item E** - Although requested by the Successor Agency ("SA"), the San Diego County Auditor-Controller ("County A-C") will not provide anticipated RPTTF Funding until after September 1, 2012. Therefore, this estimate is a good faith estimate of the SA based on prior year actual tax increment funding.

**Item F** - Because there will be a deficit for the period of January 1, 2013 through June 30, 2013, the SA intends on issuing a Notice of Insufficient Funds prior to December 1, 2012 to the County A-C notifying the County A-C pursuant to Section 34183(b) that the SA has insufficient funds to make payments on all obligations for the period ending June 30, 2013.

**Item G** - This amount was provided by letter dated July 9, 2012 from the County A-C to Gregory Wade of the City of Imperial Beach as the amount DOF approved maximum RPTTF, as discussed with and agreed to by the DOF.



Name of Successor Agency: Imperial Beach  
 County: San Diego

**RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III) -- Notes (Optional)**  
**January 1, 2013 through June 30, 2013**

Item #	Notes/Comments
All	To the extent RPTTF is not available to pay an enforceable obligation, then the SA is authorized to make payments on an enforceable obligation from any other funds it may have available, if any, at the time a payment is to be made.
3	A bond debt service reserve must be established to meet cash flow requirements of the bond debt service payments listed in Item 3. There are semi-annual debt service payments made 5 days before June 1 and 5 days before December 1 of each year. The December payment is interest only and the June payment is principal and interest. The June payment totals \$1,020,792 while the December payment totals approximately \$518,787. The amount of property tax available to the SA will typically be greater in January than in June. The \$518,787 requested for bond debt service reserve is intended to ensure that, together with the amount of property tax anticipated to be distributed to the SA in June 2013, sufficient funds will be available to make the December 2013 payment. This reserve for a bond debt service payment due December 2013, constitutes an enforceable obligation pursuant to Health and Safety Code Section 34171(d)(1)(A) and 34171(d)(1)(E).
4	A bond debt service reserve must be established to meet cash flow requirements of the bond debt service payments listed in Item 4. There are semi-annual debt service payments made 5 days before June 1 and 5 days before December 1 of each year. The December payment is interest only and the June payment is principal and interest. The June payment totals \$655,953 while the December payment totals approximately \$524,003. The amount of property tax available to the SA will typically be greater in January than in June. The \$518,787 requested for bond debt service reserve is intended to ensure that, together with the amount of property tax anticipated to be distributed to the SA in June 2013, sufficient funds will be available to make the December 2013 payment. This reserve for a bond debt service payment due December 2013, constitutes an enforceable obligation pursuant to Health and Safety Code Section 34171(d)(1)(A) and 34171(d)(1)(E).
5-7	In order to make required payments on enforceable obligations listed in the approved ROPS 1 and ROPS 2, funds from the Low and Moderate Income Housing Fund were required to be loaned/advanced to the SA for the SA to make such required payments. These funds are otherwise committed to be used toward providing the required affordable housing as required by the California Community Redevelopment Law to address to deficit of affordable housing within the City. Such loans/advances are enforceable obligations pursuant to Section 34171(d)(1)(G) upon the oversight Board's approval of the repayment schedule pursuant to Section 34180(a). The repayment schedule is upon receipt of property taxes from the County as listed on the Third ROPS and any future ROPS, subject to the repayment restrictions set forth in Section 34176(e)(6)(B). On August 1, 2012, pursuant to Resolution SA-12-13, the SA approved the repayment of these loans/advances. However, such repayment of the loans/advances to the Housing Authority is subject to the repayment restrictions set forth in Section 34176(e)(6)(B) or as otherwise required by law.
8	The funding required by the Housing Agreement is also authorized by former Redevelopment Agency Resolution No. 2011-6989 and City Council Resolution No. R-11-241 Establishing Housing Authority & Authorizing Transfer of Funds.
9	This is a project consistent with the use of bond proceeds pursuant to the 2003 Tax Allocation Bonds Series A, an enforceable obligation pursuant to Section 34171(d)(1)(A), and furthers the purposes for which the bonds were issued, in accordance with Section 34177(i). In addition, pursuant to Section 34176(g), the Housing Authority's issued a Notice to the SA dated July 24, 2012 designating the use and commitment of these Excess Housing Bonds Proceeds toward the Clean & Green Program in the amount of \$380,000. On August 1, 2012 by Resolution SA-12-11, the SA made the determination that (i) the use and commitment of these Excess Housing Bonds Proceeds is consistent with the 2003 Housing Bonds covenant obligations, including requirements relating to tax status, and (ii) that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes. These same determinations were presented to the Oversight Board on August 22, 2012. Upon approval of the Third ROPS, these funds will be transferred from Housing Authority to the SA for disbursement pursuant to Section 34176(g). The use of these funds toward this project were included on the now effective First ROPS as approved by the SA and Oversight Board and not disputed by the DOF.
10	This is a project consistent with the use of bond proceeds pursuant to the 2003 Tax Allocation Bonds Series A, an enforceable obligation pursuant to Section 34171(d)(1)(A), and furthers the purposes for which the bonds were issued, in accordance with Section 34177(i). In addition, pursuant to Section 34176(g), the Housing Authority's issued a Notice to the SA dated July 24, 2012 designating the use and commitment of these Excess Housing Bonds Proceeds toward the Habitat Project in the amount of \$533,000. On August 1, 2012 by Resolution SA-12-11, the SA made the determination that (i) the use and commitment of these Excess Housing Bonds Proceeds is consistent with the 2003 Housing Bonds covenant obligations, including requirements relating to tax status, and (ii) that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes. These same determinations were presented to the Oversight Board on August 22, 2012. Upon approval of the Third ROPS, these funds will be transferred from Housing Authority to the SA for disbursement pursuant to Section 34176(g). The use of these funds toward this project were included on the now effective First ROPS as approved by the SA and Oversight Board and not disputed by the DOF.
12	On August 1, 2012 pursuant to Resolution No. SA-12-13, the SA approved the SA reentering into this City Services Agreement between the City of Imperial Beach and the former Redevelopment Agency in order to reimburse the City for costs incurred in connection with administrative and operational costs of the SA. This approval has been proposed and submitted to the Oversight Board for consideration on August 22, 2012. Upon the Oversight Board's approval of the SA reentering into such Agreement, this item constitutes an enforceable obligation pursuant to Sections 34171(d)(1)(F), 34178(a), and 34180(b).
13	Each of these Legal Services Agreement were executed by the former RDA and constitute an enforceable obligation pursuant to Section 34171(d)(1)(E). In addition, the services assist the SA in its wind down of former RDA affairs and therefore constitute enforceable obligations pursuant to Sections 34171(d)(1)(F) and 34177.3(b).

Name of Successor Agency: Imperial Beach  
 County: San Diego

**RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III) -- Notes (Optional)**  
**January 1, 2013 through June 30, 2013**

14	These costs are associated with a DDA entered into by and between the former RDA. Pursuant to Section 34171(d)(1)(E), this item constitutes an enforceable obligation. This item is specifically excluded from the definition of and payment by the administrative cost allowance and does not constitute an administrative cost as a project-related cost pursuant to Section 34171(b).
15	These costs are associated with a contract entered into by and between the former RDA. Pursuant to Section 34171(d)(1)(E), this item constitutes an enforceable obligation. Further, agreements or contracts necessary for the costs of maintaining assets of the former RDA are enforceable obligations pursuant to Section 34171(d)(1)(F). This item is specifically excluded from the definition of and payment by the administrative cost allowance and does not constitute an administrative cost as a cost for maintaining assets pursuant to Section 34171(b).
16	This cost is required by State law set forth at Section 34179.5 and, therefore, constitutes an enforceable obligation pursuant to Section 34171(d)(1)(C). In addition, the SA will be entering into a services agreement with the selected accountant for preparation of the DDR. This agreement and its cost shall constitute an enforceable obligation pursuant to Sections 34171(d)(1)(F) and 34177.3(b). This cost may need to be paid by the SA during the period ending December 31, 2012 since information from the DDR is required to be provided to the DOF in November 2012. Therefore, the SA may be required to borrow funds from either encumbered funds or another source, including the County Treasury, in order to make such payment, which funds borrowed shall be repaid with RPTTF received during the Third ROPS period and thereafter until repaid in full.
17	Bond Debt Service Payment in the amount of \$533,092 was included on the Second ROPS for the period ending December 31, 2012, as approved by the SA and OB and not disputed by the DOF. However, there are insufficient funds to make this payment which is due in November 2012. Therefore, this obligation is added to this Third ROPS as a carry-over obligation requiring payment from the RPTTF. This payment constitutes an enforceable obligation pursuant to Section 34171(d)(1)(A). Further, the SA issued a Notice of Insufficient Funds dated April 30, 2012 to the County A-C notifying the County A-C pursuant to Section 34183(b) that the SA has insufficient funds to make payments on all obligations for the period ending December 31, 2012. In addition, the SA submitted a cash flow analysis to the County A-C in support of its Notice showing a deficit of \$3,208,435. Therefore, the SA may be required to borrow funds from either encumbered funds or another source, including the County Treasury, in order to make such payment, which funds borrowed shall be repaid with RPTTF received during the Third ROPS period and thereafter until repaid in full.





Page /Form	Line	Project Name / Debt Obligation	Payee	Description/Project Scope	Project Area	LMIHF		Bond Proceeds		Reserve Balance		Admin Allowance		RPTTF		Other	
						Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual
4	38	Veterans Park	City of IB - US Bank	Tax Exempt Bond Indenture Project. Incurred \$266 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			0	0								
4	39	Veterans Park	City of IB - Project Management	Tax Exempt Bond Indenture Project. Incurred \$10,206 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			0	0								
4	40	Storm Drain Intercept	City of IB - Various	Tax Exempt Bond Indenture Project. Incurred \$0 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			466,000	466,000								
4	44	Date Street Seacoast Inn	City of IB - Imperial Coast	Tax Exempt Bond Indenture Project. Incurred \$0 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			241,812	241,812								
4	45	Date Street	City of IB - Nasland Engineering	Tax Exempt Bond Indenture Project. Incurred \$2,950 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			0	0								
4	46	9th & Palm/ Other Bond Projects	City of IB - Kane Ballmer/McDougal	Tax Exempt Bond Indenture Project. Incurred \$9,800 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			74,496	74,496		8,714						
4	47	9th & Palm/ Other Bond Projects	City of IB - Oppen Varco	Tax Exempt Bond Indenture Project. Incurred \$0 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			17,500	17,500								
4	48	9th & Palm/ Other Bond Projects	City of IB - Keyser Marston	Tax Exempt Bond Indenture Project. Incurred \$281 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			19,926	19,926								
4	49	9th & Palm/ Other Bond Projects	City of IB - Urban Systems	Tax Exempt Bond Indenture Project. Incurred \$2,040 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			24,933	24,933								
4	59	9th & Palm Southbay Relocation	Southbay Drugs	9th and Palm Project	Palm Ave Commercial Center PA1, PA2						157,791			150,000			
4	51	9th & Palm Goodwill Relocation	Goodwill Industries	9th and Palm Project	Palm Ave Commercial Center PA1, PA2						206,744			210,000			
4	56	9th & Palm	Project Management/Legal	9th and Palm Project	Palm Ave Commercial Center PA1, PA2			90,000	90,000								
4	58	Eco-Bikeway	KOA Corporation	Tax Exempt Bond Indenture Project. Incurred \$0 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			1,310	1,310								
4	59	Eco-Bikeway	Project Management	Tax Exempt Bond Indenture Project. Incurred \$1,748 from 1/1/12 - 6/30/12. See Note 2 below.	Palm Ave Commercial Center PA1, PA2			6,000	6,000								
5	25	Section 33676 Payments	Various	Pass Thru Actual	Palm Ave Commercial Center PA1, PA2									576,814	2,027,415		
NOTE 1:		The actual amounts provided are estimates since the books of the SA are not yet closed for the period January 1, 2012 through June 30, 2012 and there may be payments not yet recorded in the SA's general ledger.															
NOTE 2:		Pursuant to the Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Projects dated February 16, 2011 and entered into the City of Imperial Beach ("City") and the former Redevelopment Agency ("RDA"), as amended, the City is providing project delivery services utilizing tax exempt bond proceeds as the funding source in furtherance of the Bond Indenture and bond issuance related documents, including services related to management and implementation of the former RDA projects, including the subject enforceable obligation. These projects are in furtherance of the bond documents and consistent with the purposes for which the bonds were issued by the former RDA. The estimated funding amount for this line item obligation has been paid to the City for project management and implementation. A portion of the estimated funding amount has been incurred and paid for the project in the amount indicated in the Description/Project Scope. The City continues to hold and retain the remaining portion of the funds for disbursement as the project progresses toward completion.															
NOTE 3:		The SA issued a Notice of Insufficient Funds dated March 29, 2012 to the County A-C notifying the County A-C pursuant to Section 34183(b) that the SA has insufficient funds to make payments on all obligations for the period ending June 30, 2012. In addition, the SA submitted a cash flow analysis to the County A-C in support of its Notice showing a deficit of \$1,193,320.															



# County of San Diego

**DONALD F. STEUER**  
CHIEF FINANCIAL OFFICER  
(619) 531-5413  
FAX (619) 531-5219

AUDITOR AND CONTROLLER  
1600 PACIFIC HIGHWAY STE 166, SAN DIEGO, CALIFORNIA 92101-2478

**TRACY M. SANDOVAL**  
ASST. CHIEF FINANCIAL OFFICER/  
AUDITOR & CONTROLLER  
(619) 531-5413  
FAX (619) 531-5219

October 1, 2012

Chris Hill, Principal Program Budget Analyst  
California Department of Finance  
915 L Street  
Sacramento, CA 95814

Dear Mr. Hill:

## RECOGNIZED OBLIGATION PAYMENT SCHEDULE REVIEW

Pursuant to Health and Safety Code (HSC) section 34177 (I) (2) (C), Successor Agency (SA) of the City of Imperial Beach submitted a Recognized Obligation Payment Schedule (ROPS) to the California Department of Finance (DOF) on August 22, 2012 for the period January to June 2013. As authorized by HSC section 34182.5, the County Auditor and Controller has completed its review of the ROPS and noted following issues:

- Per HSC section 34186(a), the ROPS III template includes a section for reporting the difference between past estimated obligations and actual payments for ROPS I. The difference is used to offset RPTTF disbursement for ROPS III. Based on our review of this section, it appears that ROPS I included an estimate for an item disqualified for Redevelopment Property Tax Trust Fund (RPTTF) funding and a related payment for this item was made by the SA. As a result, an adjustment to the ROPS I estimate and payment might be required as follows:

ROPS I, page 5, line item 25, section 33676 pass-through payment estimate of \$576,814 versus actual payment of \$2,027,415; It appears that the SA included in this estimate a portion of pass-through obligations related to fiscal year 2009-10 and 2010-11. Since the County Auditor made the pass-through payments for FY 2011-12 on June 1, 2012 as required by law, and HSC Section 34177(I)(3) specifies that obligations due prior to January 1, 2012 shall be made by the SA from property tax revenues received in the spring of 2010 and 2011 tax distribution, and from other revenues and balances transferred to the SA, adjustments for these items are required.

- HSC section 34171(b) limits the fiscal year 2012-2013 administrative cost allowance up to three percent of the property tax allocated to the SA or \$250,000, whichever is greater. For the six-month period, January to June 2013, the SA anticipates administrative allowance funded with RPTTF in the amount of \$270,510. This amount exceeds the three percent of the anticipated Enforceable obligations funded with RPTTF in the amount of \$5,774,108. When calculating the administrative allowance for ROPS III, the SA must take into account the RORF and administrative allowance distributions it received for the July to December 2012 ROPS (ROPS II) to ensure the annual cap is not exceeded.

Recognized Obligation Payment Schedule Review  
Page Two  
October 1, 2012

- Per communication with DOF, the following ROPS I items should be paid from administrative allowance or other source; however, these items were actual paid from RPTTF.
  - Page 3, line item 3, RDA accrued liabilities, estimate of \$203,233 versus payment of \$203,233
  - Page 3, line item 5, RDA 30 layoff notice, estimate of \$28,646 versus payment of \$28,646
  - Page 3, line item 14, city service agreement, estimate of \$200,000 versus payment of \$156,046
  - Page 15, line item 15, hotel DDA compliance, estimate of \$5,000 versus payment of \$1,978
  - Page 17, line item 17, legal, estimate of \$60,000 versus payment of \$48,144

Please direct inquiries to Juan Perez, Senior Auditor and Controller Manager, of Property Tax Services at [juan.perez@sdcountry.ca.gov](mailto:juan.perez@sdcountry.ca.gov) or (858) 694-2901.

Sincerely,



TRACY M. SANDOVAL  
Assistant Chief Financial Officer/Auditor and Controller

PTS:JP:ge

c: Robert Scott, Supervisor, DOF  
Jenny DeAngelis, Lead Analyst, DOF  
Mayda Winter, Chair, Oversight Board of the SA  
Gregory Wade, Deputy Director, City of Imperial Beach  
Gary Brown, Executive Director, City of Imperial Beach



October 6, 2012

Mr. Gregory Wade, Deputy Director  
City of Imperial Beach  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932

Dear Mr. Wade:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Imperial Beach Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 22, 2012 for the period of January through June 2013. Finance has completed its review of your ROPS III, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations:

- Item 3 and 4 – Tax Allocation Bond reserves in the amount of \$1.04 million. The Agency is requesting and Finance is approving adequate funding to make the 2003 and 2010 TAB principle and interest payments due in 2013 in Item 1 and 2. Therefore, the Agency will be receiving adequate bond payment funding for ROPS III and ROPS IV.
- Item 5 through 7 – “Housing Loan/Advance...” in the amount of \$2.1 million. The Agency could not provide agreement documents to support these items as enforceable obligations. Therefore, these items are not enforceable obligations and not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.
- Item 8 – “Housing Agreement” in the amount of \$90,000 is a contract with Imperial Beach Housing Authority and the City of Imperial Beach. Since the Agency is not a party to this agreement, the item is not an enforceable obligation eligible for RPTTF money.
- Item 9 and 10 – “Clean & Green Program” and “Habitat Project” in the amount of \$913,000 requested to be funded with bond proceeds. These are contracts between the Imperial Beach Housing Authority and the City of Imperial Beach. Since the Agency is not a party to this agreement, these items are not enforceable obligations and not eligible for bond proceed funding.
- Item 12 – “City Service Agreement” in the amount of \$240,000 is a loan between the Agency and its creator. HSC section 34171 (d) (2) states that agreements between the

city that created the redevelopment agency (RDA) and the Agency are not enforceable. This item is not an enforceable obligation and not eligible for RPTTF funding. Upon receiving a Finding of Completion from Finance, HSC section 34191.4 (b) may cause these items to be enforceable in future ROPS periods.

- Item 17 – “2003 Tax Allocation Bonds Series A” in the amount of \$533,092. According to the Agency, RPTTF is being requested to reimburse a cash flow loan from the county. However, the funds have not been advanced and there is no agreement with the county memorializing the loan with a repayment schedule. Therefore, the item does not qualify as a loan as defined by the HSC section 34171 (d) (1) (B) and is not an enforceable obligation.
- Administrative costs funded by RPTTF exceed the allowance by \$201,458. HSC section 34171(b) limits administrative costs to three percent of property tax allocated to the successor agency or \$250,000, whichever is greater for the fiscal year. As a result, the Agency's administrative cost allowance is capped at \$250,000 for the fiscal year. In the period July through December of 2012, \$100,948 of administrative allowance was used, leaving \$149,052 available for the January through June 2012 period. Therefore, \$201,458 of the claimed \$350,510 is denied. Item 13 was reclassified to an administrative cost and used to arrive at the denied allowance.

HSC section 34171 (b) allows litigation expenses related to assets or obligations to be funded with property tax outside the administrative cap. However since Item 13 relates to general legal representation and not specifically to bringing or contesting a legal action in court, it is considered an administrative expense.

Except for items denied in whole or in part as enforceable obligations as noted above, Finance is approving the remaining items listed in your ROPS III. If you disagree with the determination with respect to any items on your ROPS III, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

[http://www.dof.ca.gov/redevelopment/meet\\_and\\_confer/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: \$1,872,506 as summarized below:

<b>Approved RPTTF Distribution Amount For the period of January through June 2013</b>	
Total RPTTF funding requested for obligations	\$ 5,774,108
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Item 3 - Denied duplicate request for bond reserves	518,878
Item 4 - Denied duplicate request for bond reserves	524,003
Item 5 - Denied, no agreement to support the obligation	369,607
Item 6 - Denied, no agreement to support the obligation	872,273
Item 7 - Denied, no agreement to support the obligation	822,801
Item 8 - Denied, not an obligation of the SA	90,000
Item 12 - Denied City loan	240,000
Item 13 - Wind down legal costs reclassified as administrative	80,000
Item 17 - Denied unsupported cash flow loan	533,092
Total approved RPTTF for enforceable obligations	\$ 1,723,454
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	149,052
<b>Total RPTTF approved:</b>	<b>\$ 1,872,506</b>
<b>Administrative Cost Calculation</b>	
Total RPTTF for the period July through December 2012	\$ 1,388,690
Total RPTTF for the period January through June 2013	1,723,454
<b>Total RPTTF for fiscal year 2012-13:</b>	<b>\$ 3,112,144</b>
Allowable administrative cost for fiscal year 2012-13 (Greater of 3% or \$250,000)	250,000
Administrative allowance for the period of July through December 2012	100,948
<b>Allowable RPTTF distribution for administrative cost for ROPS III:</b>	<b>\$ 149,052</b>

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

Please refer to the ROPS III schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS III Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%20III%20Forms%20by%20Successor%20Agency/).

All items listed on a future ROPS are subject to a subsequent review. An item included on a future ROPS may be denied even if it was not questioned from the preceding ROPS.

The amount available from the RPTTF is the same as the property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

Mr. Wade  
October 6, 2012  
Page 4

Please direct inquiries to Robert Scott, Supervisor or Jenny DeAngelis, Lead Analyst at  
(916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Szalay", with a long horizontal stroke extending to the left.

STEVE SZALAY  
Local Government Consultant

cc: Mr. Gary Brown, Executive Director, City of Imperial Beach  
Mr. Juan Perez, Senior Auditor and Controller Manager, County of San Diego  
Ms. Nenita DeJesus, Senior Auditor and Controller Accountant, County of San Diego



## City of Imperial Beach, California

### SUCCESSOR AGENCY

825 Imperial Beach Blvd., Imperial Beach, CA 91932

Tel: (619) 423-8303 Fax: (619) 628-1395

March 29, 2012

Tracy M. Sandoval  
Asst. Chief Financial Officer / Auditor and Controller  
County of San Diego  
1600 Pacific Highway; Suite 166  
San Diego, California 92101-2478

RE: Imperial Beach Redevelopment Agency Successor Agency

Dear Ms. Sandoval:

Pursuant to California Health and Safety Code Section 34183(b), please be informed that the total amount available to the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") from the Redevelopment Property Tax Trust Fund allocation to the Successor Agency's Redevelopment Obligation Retirement Fund, from other funds transferred from the former Imperial Beach Redevelopment Agency, and from funds that have or will become available through asset sales and redevelopment operations, are insufficient to fund the payments required by paragraphs (1) to (3) of California Health and Safety Code Section 34183(a), inclusive, in the Recognized Obligation Payment Schedule period ending June 30, 2012.

In accordance with the mandate of AB1 X 26 that all enforceable obligations be paid when due, it is urgent that sufficient funds be transferred to the Successor Agency from the former tax increment that you have collected from the redevelopment projects of the former Imperial Beach Redevelopment Agency. The amounts required are set forth on the Enforceable Obligation Payment Schedule previously prepared by the former Imperial Beach Redevelopment Agency as well as the above-referenced Recognized Obligation Payment Schedule.

This fund insufficiency can also be addressed temporarily by the loan of funds to the Successor Agency from the County of San Diego pursuant to applicable law.

Please feel free to contact me at (619) 423-0314 should you have any questions regarding the matters discussed above.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gary Brown', is written over a horizontal line.

Gary Brown  
Successor Agency Executive Director  
City of Imperial Beach

cc: Jennifer Lyon, Successor Agency Counsel  
Kane, Ballmer & Berkman, Successor Agency Special Counsel



# City of Imperial Beach, California

SUCCESSOR AGENCY

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

---

April 30, 2012

Tracy M. Sandoval  
Asst. Chief Financial Officer / Auditor and Controller  
County of San Diego  
1600 Pacific Highway; Suite 166  
San Diego, California 92101-2478

RE: Imperial Beach Redevelopment Agency Successor Agency

Dear Ms. Sandoval:

Pursuant to California Health and Safety Code Section 34183(b), please be informed that the total amount available to the Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") from the Redevelopment Property Tax Trust Fund allocation to the Successor Agency's Redevelopment Obligation Retirement Fund, from other funds transferred from the former Imperial Beach Redevelopment Agency, and from funds that have or will become available through asset sales and redevelopment operations, are insufficient to fund the payments required by paragraphs (1) to (3) of California Health and Safety Code Section 34183(a), inclusive, in the Recognized Obligation Payment Schedule period ending December 31, 2012.

In accordance with the mandate of AB X1 26 that all enforceable obligations be paid when due, it is urgent that sufficient funds be transferred to the Successor Agency from the former tax increment that you have collected from the redevelopment projects of the former Imperial Beach Redevelopment Agency. The amounts required are set forth on the above-referenced Recognized Obligation Payment Schedule.

This fund insufficiency can also be addressed temporarily by the loan of funds to the Successor Agency from the County of San Diego pursuant to applicable law.

Please feel free to contact me at (619) 423-0314 should you have any questions regarding the matters discussed above.

Very truly yours,

Gary Brown  
Successor Agency Executive Director  
City of Imperial Beach

cc: Jennifer Lyon, Successor Agency Counsel  
Kane, Ballmer & Berkman, Successor Agency Special Counsel



# County of San Diego

**DONALD F. STEUER**  
CHIEF FINANCIAL OFFICER  
(619) 531-5413  
FAX (619) 531-5219

AUDITOR AND CONTROLLER  
1600 PACIFIC HIGHWAY STE 166, SAN DIEGO, CALIFORNIA 92101-2478

**TRACY M. SANDOVAL**  
ASST. CHIEF FINANCIAL OFFICER/  
AUDITOR & CONTROLLER  
(619) 531-5413  
FAX (619) 531-5219

May 4, 2012

TO: Redevelopment Successor Agencies

FROM: Tracy M. Sandoval  
Assistant Chief Financial Officer/Auditor and Controller

## NOTIFICATION OF INSUFFICIENT FUNDS

Our office received your notification of insufficient funds pursuant to Health and Safety Code Section 83183(b). As required by this statute, we have notified the State Controller's Office (SCO) of your letter and we must verify whether your agency will have sufficient funds from which to service debts according to the Recognized Obligation Payment Schedule (ROPS) and report our findings to the SCO.

Please provide to us your cash flow analysis and any related information you have used to make the determination that you will not have sufficient funds to make payments for items included in the July-December ROPS by **May 11, 2012**. We will send a follow up communication with additional instructions after we have reviewed these records.

Please contact Juan R. Perez at (619) 531-6240 if you have questions.

A handwritten signature in cursive script that reads "Tracy M. Sandoval".

TRACY M. SANDOVAL  
Assistant Chief Financial Officer/Auditor and Controller

PTS:JP:ld

1 KAMALA D. HARRIS  
 Attorney General of California  
 2 PETER A. KRAUSE  
 Supervising Deputy Attorney General  
 3 STEPHANIE F. ZOOK  
 Deputy Attorney General  
 4 State Bar No. 238383  
 1300 I Street, Suite 125  
 5 P.O. Box 944255  
 Sacramento, CA 94244-2550  
 6 Telephone: (916) 324-2512  
 Fax: (916) 324-8835  
 7 E-mail: Stephanie.Zook@doj.ca.gov  
*Attorneys for Respondent and Defendant*  
 8 *Ana Matosantos, Director of the Department of Finance*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 **CITY OF PALMDALE, CITY OF**  
 12 **GLENDALE, CITY OF CULVER CITY,**  
 13 **CITY OF HUNTINGTON BEACH, CITY**  
 14 **OF PASADENA, CITY OF INGLEWOOD,**  
 15 **CITY OF NATIONAL CITY, CITY OF**  
 16 **IMPERIAL BEACH, AND CITY OF**  
 17 **HAYWARD ACTING SOLELY IN THEIR**  
 18 **CAPACITIES AS SUCCESSOR**  
 19 **AGENCIES UNDER CALIFORNIA**  
 20 **HEALTH & SAFETY CODE §§34171(J)**  
 21 **AND 34173 AS ENACTED BY ASSEMBLY**  
 22 **BILL NO. IX 26 OF THE 2011-12 FIRST**  
 23 **EXTRAORDINARY SESSION,**

24 Petitioners and Plaintiffs,

25 v.

26 **ANA MATOSANTOS, in her official**  
 27 **capacity as Director of the State of**  
 28 **California Department of Finance; WENDY**  
**WATANABE, in her official capacity as the**  
**Auditor-Controller of the County of Los**  
**Angeles; DAVID SUNDSTROM, in his**  
**official capacity as the Auditor-Controller of**  
**the County of Orange; TRACY**  
**SANDOVAL, in her official capacity as the**  
**Auditor-Controller of the County of San**  
**Diego; PATRICK O'CONNELL, in his**  
**official capacity as the Auditor-Controller**  
**of the County of Alameda; and DOES 1-50,**  
**inclusive,**

Respondents and Defendants.

Case No. 34-2012-80001154

**OPPOSITION OF FINANCE DIRECTOR**  
**ANA MATOSANTOS TO EX PARTE**  
**APPLICATION FOR TEMPORARY**  
**RESTRAINING ORDER AND OSC RE:**  
**PRELIMINARY INJUNCTION**

Date: May 30, 2012  
 Time: 2:00 p.m.  
 Dept: 29  
 Judge: Honorable Timothy M. Frawley  
 Trial Date: None  
 Action Filed: May 22, 2012

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	Page
Introduction.....	1
Legal background.....	2
Argument .....	4
I.    Petitioners have failed to meet their burden to establish that a temporary restraining order is warranted.....	4
II.   Petitioners have not identified any tax increment bonds or other enforceable obligations that were wrongfully disapproved and thus have not met their burden to show irreparable harm. ....	5
III.  DOF did not issue any directives. ....	6
IV.  ABx1-26 does not authorize the sequestration of funds .....	8
V.   Petitioners already have received their may 16 payments. ....	9
VI.  Schools, counties, and special districts throughout the state will be harmed if petitioners' application for a temporary restraining order is granted. ....	9
Conclusion.....	10

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

**CASES**

*California Redevelopment Assn. v. Matosantos*  
(2011) 53 Cal.4th 231 [hereafter "CRA"] ..... 9

*California Taxpayers' Assn. v. Franchise Tax Bd.*  
(2010) 190 Cal.App.4th 1139 ..... 6

*Church of Christ in Hollywood v. Superior Court*  
(2002) 99 Cal.App.4th 1244 ..... 4

*Graf v. San Diego Unified Port Dist.*  
(1988) 205 Cal.App.3d 1189 ..... 4

*Intel Corp. v. Hamidi*  
(2003) 30 Cal.4th 1342 ..... 5

*Save Our Bay, Inc. v. San Diego Unified Port Dist.*  
(1996) 42 Cal.App.4th 686 ..... 10

*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.*  
(1994) 23 Cal.App.4th 1459 ..... 4, 5

*Warmington Old Town Associates, L.P. v. Tustin Unified School Dist.*  
(2002) 101 Cal.App.4th 840 ..... 8

*Western/California, Ltd. v. Dry Creek Joint Elementary School Dist.*  
(1996) 50 Cal.App.4th 1461 ..... 8

**STATUTES**

Civ. Code, § 3422 ..... 4

Code Civ. Proc., § 526 ..... 4

Code of Civil Procedure § 389 ..... 10

Health and Safety Code ..... *passim*

**OTHER AUTHORITIES**

Assembly Bill No. 26 (2011-2012 First Ex. Sess.) ..... 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## INTRODUCTION

In 2011, the California Legislature enacted Assembly Bill No. 26 (2011-2012 First Ex. Sess.) (ABx1-26), a bill that eliminated redevelopment agencies (RDAs) and set up a comprehensive scheme for dissolving the entities, reviewing their fiscal affairs, and ensuring payment of all enforceable obligations. Under ABx1-26, successor agencies like petitioners must prepare a Recognized Obligation Payment Schedule (ROPS) every six months listing the enforceable obligations of their former RDAs. This dispute involves the process for payment of obligations listed on these ROPSs, as well as how these ROPSs are submitted, reviewed, and approved. The primary issue presented by this application is whether county auditor-controllers, who under ABx1-26 are obliged to distribute former tax increment funds, should be required to impound money pending final resolution of disputes over whether specific financial obligations listed on a ROPS are enforceable. Because petitioners' claims are untethered from the facts and the law, and because there is no emergency requiring this Court's intervention, respondent Matosantos respectfully requests that the Court deny the ex parte application and decline to issue an order to show cause.

As an initial matter, petitioners' request for the extraordinary relief of a TRO is premised entirely on preliminary findings and conclusory allegations unsupported by evidence. In fact, petitioners fail to articulate with any specificity why emergency relief is necessary or warranted. Even a cursory review of petitioners' application and its supporting documents reveals the illusory character of their claims. The prematurity of the application is underscored by the fact that on May 25, 2012, California Department of Finance (DOF) *approved* the vast majority of the line items on petitioners' ROPSs. Remarkably, DOF approved every item on the lead petitioner, the City of Palmdale's, ROPSs.

Petitioners also make much of what they mischaracterize as "directives" or "orders" purportedly issued by DOF. In fact, these non-binding comments merely represent DOF's interpretation of ABx1-26, an act that it is charged with administering. Its interpretation of this newly-enacted legislation, which was given in the context of an ongoing dialog with successor agencies and county auditor-controllers, should be accorded deference, particularly given that

1 petitioners' fears about what these non-binding opinions may have required never materialized.  
2 Indeed, the moving papers contain no evidence that any enforceable obligations were erroneously  
3 denied by DOF, or that any ROPS line items will be unpaid because of a procedural error. In  
4 short, petitioners have not come close to meeting their burden to establish a likelihood of success  
5 on the merits.

6 Petitioners also cannot establish any injury, much less irreparable injury, to support  
7 emergency relief because they seek only money. Monetary damages are insufficient to support a  
8 request for a temporary restraining order. In the unlikely event petitioners ultimately prevail as to  
9 any disputed line item, the law allows such judgments to be listed on future ROPSs and paid for  
10 then. "Sequestering" funds in the meantime is both unwarranted and completely unauthorized by  
11 ABx1-26.

12 Given the meritless nature of petitioners' claims, and their failure to establish any harm, the  
13 balance of equities and harms tips heavily against them. Local government entities, school  
14 districts, community college districts, and public safety agencies all have a stake in this matter  
15 because they are competing for the same property tax funds, and because new cuts are being  
16 made every week to critical education, fire, and police services. If petitioners succeed in  
17 sequestering a year's worth of their claimed payments from six months' worth of property tax,  
18 they will be blocking payment of property tax money that would otherwise go to schools, cities,  
19 and counties. Petitioners' request for a temporary restraining order should be denied.

## 20 LEGAL BACKGROUND

21 On December 29, 2011, the Supreme Court of California upheld ABx1-26 against a number  
22 of constitutional challenges. In the wake of that decision, successor agencies are winding down  
23 the business of RDAs, including making payments on existing bonds and other obligations. The  
24 only payments a successor agency is authorized to make are for "enforceable obligations," as  
25 defined by Health and Safety Code section 34171, subdivision (d)(1).<sup>1</sup> But not everything a  
26 successor wishes to spend money on qualifies as an enforceable obligation. For instance, to

27 \_\_\_\_\_  
28 <sup>1</sup> All statutory references are to the Health and Safety Code, unless otherwise noted.

1 qualify as an enforceable obligation a bond must have increment pledged for its payment. County  
2 auditor-controllers may allocate money to successor agencies for payments listed in approved  
3 ROPSs only for: (a) debt service payments scheduled to be made for tax allocation bonds;  
4 (b) payments scheduled to be made on revenue bonds, but only to the extent the pledged revenues  
5 are insufficient and tax increment revenues were also pledged; and (c) payments scheduled for  
6 other debts and obligations listed in the ROPS that are required to be paid from former tax  
7 increment revenue. (§ 34183, subs. (a)(2)(A)-(C).)

8 Successor agencies also must list putative enforceable obligations on a ROPS in order for  
9 that obligation to be reviewed for approval. (§ 34177, subd. (a).) ROPSs are prepared by the  
10 successor agencies, but under ABx1-26, oversight boards<sup>2</sup> and then DOF review the schedules to  
11 ensure that all proposed payments meet ABx1-26's definition of an enforceable obligation.  
12 (§§ 34179, 34180.) **In particular, DOF may review an oversight board's approval of a ROPS if it**  
13 **raises the issue within three business days.** (§ 34179, subd. (h).) If DOF raises an issue then an  
14 oversight board's approval is not effective until approved by DOF. (*Ibid.*) Also DOF has the  
15 authority to require documents associated with the enforceable obligations to be provided to it  
16 and standing to sue successor entities for non-compliance with their duties, and to seek injunctive  
17 relief. (§ 34177, subd., (a)(2).)

18 County auditor-controllers also have a role in the RDA wind-down process (see §§ 34182-  
19 34188.8), but lack authority to review ROPSs. Instead, they are required to take property tax  
20 proceeds that would have been available to the RDA and place them into a Redevelopment  
21 Property Tax Trust Fund (RPTTF). (§ 34182, subd. (c)(1).) The auditors administer the RPTTF  
22 for the benefit of the holders of former redevelopment agency enforceable obligations, and the  
23 taxing entities that receive passthrough payments and distributions of property taxes. (§ 34182,  
24 subd. (c)(2).) Moneys in the RPTTF are required to be used to (1) satisfy statutory and  
25 contractual passthrough payments to local agencies and school entities, (2) be sent to successor  
26 agencies to pay for enforceable obligations listed on the ROPS, (3) pay for administrative costs.

27 <sup>2</sup> The composition and powers of oversight boards are defined in sections 34179 through  
28 34181.

1 (§ 34183, subd. (a).) The funding remaining in the RPTTF after these three distributions is  
2 required to be distributed to local agencies and school entities. (§ 34183, subd. (a)(4).) This is  
3 not a one-time event—this process repeats itself twice a year until all enforceable obligations  
4 have been retired. (§§ 34183, 34187.)

## 5 ARGUMENT

### 6 I. PETITIONERS HAVE FAILED TO MEET THEIR BURDEN TO ESTABLISH THAT A 7 TEMPORARY RESTRAINING ORDER IS WARRANTED.

8 “[T]rial courts should evaluate two interrelated factors when deciding whether or not to  
9 issue [a restraining order]. The first is the likelihood that the plaintiff will prevail on the merits at  
10 trial. The second is the interim harm that the plaintiff is likely to sustain if the [restraining order]  
11 were denied as compared to the harm that the defendant is likely to suffer if the [order] were  
12 issued.” (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251  
13 [alteration in original; quoting *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70].)  
14 Plaintiffs have the burden of satisfying these requirements. (*Graf v. San Diego Unified Port Dist.*  
15 (1988) 205 Cal.App.3d 1189, 1194.) As shown below, petitioners are not likely to prevail on the  
16 merits. Nor can they show that the balance of harms warrants the extraordinary relief they seek.

17 “The showing of potential harm that a plaintiff must make in support of a request for  
18 preliminary injunctive relief may be expressed in various linguistic formulations, such as the  
19 inadequacy of legal remedies or the threat of irreparable injury (compare Civ. Code, § 3422 with  
20 Code Civ. Proc., § 526), but whatever the choice of words it is clear that a plaintiff must make  
21 some showing which would support the exercise of the rather extraordinary power to restrain the  
22 defendant’s actions prior to a trial on the merits.” (*Tahoe Keys Property Owners’ Assn. v. State*  
23 *Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471 [citations omitted].)

24 Generally, statutes and ordinances will not be enjoined, and where plaintiffs seek such an  
25 injunction, public policy must be considered. “Where, as here, the defendants are public agencies  
26 and the plaintiff seeks to restrain them in the performance of their duties, public policy  
27 considerations also come into play. There is a general rule against enjoining public officers or  
28 agencies from performing their duties.” (*Ibid.* [citations omitted]; see also Code Civ. Proc.,

1 § 526, subd. (b)(4) [prohibiting injunction from being granted “[t]o prevent the execution of a  
2 public statute by officers of the law for the public benefit”].) Although this rule does not preclude  
3 a court from enjoining unconstitutional or void acts, to support a request for such relief, “the  
4 plaintiff must make a significant showing of irreparable injury.” (*Tahoe Keys Property Owners’*  
5 *Assn. v. State Water Resources Control Bd.*, *supra*, 23 Cal.App.4th at p. 1471.) Irreparable  
6 injuries are ones that cannot be adequately compensated in damages. (*Intel Corp. v. Hamidi*  
7 (2003) 30 Cal.4th 1342, 1352.) Here, the only harm alleged by petitioners is monetary, and that  
8 is insufficient to support a request for a temporary restraining order or even a preliminary  
9 injunction. “In general, if the plaintiff may be fully compensated by the payment of damages in  
10 the event he prevails, then preliminary injunctive relief should be denied.” (*Tahoe Keys Property*  
11 *Owners’ Assn. v. State Water Resources Control Bd.*, *supra*, 23 Cal.App.4th at p. 1471.)

12 Also, attending to the state’s and local governments’ fiscal health “is a matter of significant  
13 public concern and provisional injunctive relief which would deter or delay defendants in the  
14 performance of their duties would necessarily entail a significant risk of harm to the public  
15 interest.” (*Id.* at p. 1473.)

16 **II. PETITIONERS HAVE NOT IDENTIFIED ANY TAX INCREMENT BONDS OR OTHER**  
17 **ENFORCEABLE OBLIGATIONS THAT WERE WRONGFULLY DISAPPROVED AND THUS**  
18 **HAVE NOT MET THEIR BURDEN TO SHOW IRREPARABLE HARM.**

19 Petitioners claim that unless a temporary restraining order is issued, insufficient RPTTF  
20 funds will be available to them to make debt service payments on certain tax increment bond  
21 obligations issued prior to ABx1-26. (See Petitioners’ MPA, at p. 4.) Whether denial of a bond  
22 payment could constitute irreparable harm is a purely academic discussion because the only tax  
23 increment bonds petitioners actually cite come from the City of Imperial Beach and the City of  
24 National City and were *approved* by DOF.

25 Specifically, petitioners assert that the City of National City will not be able to make a bond  
26 payment of \$5,982,523 that is coming due (see Petitioners’ MPA, at p. 10), but DOF approved  
27 these exact payments. (Finance Director Ana Matosantos’s Request for Judicial Notice (RJN),  
28 Ex. F; Declaration of Guillermo A. Frias (Frias Decl.), Ex. 21, Form A, at p. 1.) There is no  
reason, and no facts supporting any reason, why this bond payment will not be paid. Hence,

1 petitioners' assertion that DOF missed the 3-day deadline for review of these ROPSS is moot. For  
2 the City of Imperial Beach, DOF approved everything on the city's submitted ROPSS. (RJN,  
3 Ex. D.) Likewise, the lead petitioner, the City of Palmdale, also had the entirety of its ROPSS  
4 approved by DOF. (RJN, Ex. G.) Petitioners' claimed harm simply has not—and will not—  
5 come to pass. This is a reoccurring problem with respect to petitioners' allegations

6 Petitioners also claim that the City of Glendale "has had approximately \$31,000,000 of  
7 enforceable obligations in its ROPS I and ROPS II challenged by the DOF without adhering to  
8 the procedure established by AB 26," but they do not explain how exactly DOF failed to adhere  
9 to procedures or how these allegedly enforceable obligations are in fact enforceable. (See  
10 Petitioners' MPA, at pp. 10-11.) Similarly, petitioners note that DOF has denied items on the  
11 City of Pasadena's ROPS I and II, but make no showing that any of these items are actually  
12 enforceable obligations or even what these obligations are. (*Id.* at p. 11.) These conclusory  
13 allegations are petitioners' only examples of their alleged irreparable harm and they in no way  
14 justify a temporary restraining order.

15 Even if these were not the facts before this court, petitioners cite no authority for the  
16 proposition that the denial of a bond payment alone constitutes irreparable harm. And they offer  
17 no evidence, as they must, that any listing of debt service payments has been denied. Further,  
18 they offer no evidence, as they must, that even if there were a denial of a valid bond payment, that  
19 funds for such payment of disputed obligations are not available in their reserves or from other  
20 sources. Further, since the municipal obligees are now dissolved, default would have no effect on  
21 the petitioners or their credit rating, and thus would not constitute irreparable harm.

### 22 **III. DOF DID NOT ISSUE ANY DIRECTIVES.**

23 Although petitioners cast the guidance that DOF has offered in e-mails and posted FAQs  
24 pejoratively as "directives" or "orders," this characterization is grossly inaccurate. DOF merely  
25 has offered its non-binding interpretation of various provisions of ABx1-26 in the context of an  
26 ongoing dialog with successor agencies and auditor-controllers. (See *California Taxpayers' Assn.*  
27 *v. Franchise Tax Bd.* (2010) 190 Cal.App.4th 1139, 1152 [courts "give deference to reasonable  
28 interpretations of statutes by administrative agencies charged with administering them"], citing

1 *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11-12.) DOF could  
2 have refused to respond to questions that stakeholders, including county auditor-controllers and  
3 successor agencies, had about this new area of the law, but instead engaged in these discussions.  
4 DOF has not “ordered” anyone to do anything, nor could it. The independent authority of  
5 auditor-controllers is codified in Chapter 5 of ABx1-26. (See §§ 34182-34188.8.)

6 To support their claims of overreaching by DOF, petitioners cite Exhibit 2 to the  
7 Declaration of Guillermo A. Frias, which is an e-mail sent by DOF staff on May 10, 2012. DOF  
8 has subsequently clarified the guidance provided in that e-mail. (RJN, Ex. J.) DOF merely  
9 provided auditor-controllers with letters of approval and denial to facilitate ROPS tracking the  
10 status of DOF review, if any. (*Ibid.*) The interpretations in this correspondence are consistent  
11 with DOF’s authority under ABx1-26 and merely memorialize DOF’s authorized acts. The  
12 approval and denial letters are not, as petitioners argue, a separate procedural hurdle. DOF  
13 acknowledged that if it did not request a review of a ROPS that had been approved by the  
14 oversight board within three days of that approval, then the oversight board’s approval of the  
15 ROPS becomes effective and RPTTF funds should be distributed in accordance with the ROPS as  
16 approved by the oversight board. (*Ibid.*)

17 Similarly, the auditor-controllers’ distribution of funds is not contingent on receipt of a  
18 copy of an approval letter from DOF. Again, approval letters were issued merely as a means for  
19 auditor-controllers to keep track of which ROPSs are effective and which ones are not since no  
20 ROPS approved by an oversight board is effective until DOF has approved it. (§ 34179, subd.  
21 (h).) In any case, DOF has approved most final ROPSs in their entirety, except for a few  
22 instances in which line items were disapproved. (See, e.g., RJN, Exs. F, J.) There is no  
23 requirement that DOF issue or not issue “notices” of approval approving the entire ROPS for a  
24 successor agency to receive property tax revenue, but an oversight board’s approval of a ROPS is  
25 not effective (and cannot be used for payment) until DOF approves it. As a result, the means  
26 chosen by DOF to discharge its statutory duties in approving the oversight boards’ actions to  
27 approve ROPS is reasonable and should be accorded deference by the Court.

1           Petitioners' complaint with the guidance offered in a May 16, 2012, DOF email is equally  
2 overblown. This email states, "[I]t is *possible*, however, that Finance *could* object to the funding  
3 source that a successor agency proposes to use to pay that debt service."<sup>3</sup> (Frias Decl., Ex. 5  
4 [emphasis added].) Again, this email is no directive. Furthermore, without exception DOF has  
5 approved any bond payment for which tax increment was pledged. As such, there can be no  
6 claim that DOF is wrongfully disapproving enforceable obligations. Again, petitioners' papers  
7 make no specific mention of any enforceable obligations that DOF has improperly denied.  
8 Petitioners cannot establish the merits of any of their claims relating to alleged directives and thus  
9 they cannot establish any harm, much less irreparable harm, relating to this claim.

10           Petitioners' remaining complaints about DOF's guidance appear to be based on their  
11 erroneous assertion, discussed below, that they should have been paid again on May 16 funds that  
12 had already been disbursed in full when they were still RDAs.

#### 13 **IV. ABX1-26 DOES NOT AUTHORIZE THE SEQUESTRATION OF FUNDS**

14           The only review of the oversight board's approval of a ROPS that ABx1-26 provides for is  
15 DOF's. (§ 34179, subd. (h).) ABx1-26 does not provide for an administrative dispute resolution  
16 forum for successor agencies to challenge DOF's final determination. Moreover, ABx1-26 does  
17 not give auditor-controllers their own review or any authority to determine what a legitimate  
18 dispute is. As such, the auditor-controllers have no authority to do anything other than distribute  
19 funds after the DOF has completed its review. Sequestration, as petitioners refer to it, is not a  
20 mechanism contemplated by the Legislature, and the act cannot be amended via a TRO  
21 application. (See *Warmington Old Town Associates, L.P. v. Tustin Unified School Dist.* (2002)  
22 101 Cal.App.4th 840, 857 [declining to alter statute to provide an exemption from school-impact  
23 fees for redevelopment projects]; *Western/California, Ltd. v. Dry Creek Joint Elementary School*  
24 *Dist.* (1996) 50 Cal.App.4th 1461, 1488 ["Courts may not rewrite statutes to supply omitted terms  
25 or to conform to an assumed, unexpressed legislative intent. It is, of course, up to the Legislature,

26  
27 <sup>3</sup> For example, if certain bonds are revenue bonds (e.g. payment is contingent on receipt  
28 of rent or parking revenues) and no tax increment is pledged to their payment, then DOF could  
object to the use of property tax to pay such bonds.

1 and not the courts, to rewrite statutes”], citations omitted.) If petitioners wish to dispute specific  
2 denials by DOF of obligations they claim to be enforceable, they must frame a proper legal  
3 challenge rather than offering speculation and overstatements. Any future judgments from these  
4 disputes would be listed on future ROPSS and paid for then. (§ 34171, subd. (d)(1)(D).)

5 **V. PETITIONERS ALREADY HAVE RECEIVED THEIR MAY 16 PAYMENTS.**

6 In *California Redevelopment Association v. Matosantos*, the Court reformed ABx1-26’s  
7 effective dates and deadlines for performance, delaying implementation of the statute for four  
8 months to account for the time lost to litigation. (*California Redevelopment Assn. v. Matosantos*  
9 (2011) 53 Cal.4th 231, 275 [hereafter “CRA”].) The Court thus extended the first distribution  
10 deadline to May 16, 2012 but did not find that the State of California should thereby lose out on  
11 the money it was entitled to under ABx1-26 for the first half of the year. (*Id.* at p. 276.) Before  
12 dissolution of the RDAs was effective, county auditor-controllers distributed the entire May 16  
13 payment to RDAs resulting in zero excess to be distributed to the taxing entities. Thus, not only  
14 was the May 16 distribution made early, but it included funds above and beyond those needed to  
15 pay enforceable obligations.

16 Simply put, petitioners’ imprecise and unsupported assertion that county auditor-controllers  
17 failed to discharge their obligation to issue payments on May 16 fails because all of the money for  
18 the relevant time period up to June 2012 had already been distributed. Consequently, the auditor-  
19 controllers had no funds in their RPTTFs to distribute on May 16.

20 **VI. SCHOOLS, COUNTIES, AND SPECIAL DISTRICTS THROUGHOUT THE STATE WILL BE**  
21 **HARMED IF PETITIONERS’ APPLICATION FOR A TEMPORARY RESTRAINING ORDER**  
22 **IS GRANTED.**

23 The balance of harms on this motion tips sharply against petitioners. As the California  
24 Supreme Court recently noted, local agencies are unfortunately all competing for the same  
25 property tax dollars: “Proposition 13 created a kind of shell game among local government  
26 agencies for property tax funds. The only way to obtain more funds was to take them from  
27 another agency.” (*CRA*, 53 Cal.4th at p. 247, quoting Fulton & Shigley, *Guide to California*  
28 *Planning* (3d ed. 2005) pp. 263–264.) And ABx1-26 finds that “[s]tate and local governments are  
still facing incredibly significant declines in revenues and increased need for core governmental

1 services,” “[l]ocal governments across this state continue to confront difficult choices and have  
2 had to reduce fire and police protection among other services,” and “[s]chools have faced  
3 reductions in funding that have caused school districts to increase class size and layoff teachers,  
4 as well as make other hurtful cuts.” (ABx1-26, § 1.) All of this is ongoing, and cuts continue. If  
5 petitioners’ application for a temporary restraining order is granted, these services will suffer.

6 Because of their significant stake in the outcome of this action, petitioners’ failure to join  
7 these taxing entities as real parties in interest further militates against granting provisional relief.  
8 The test for determining whether a party is indispensable under Code of Civil Procedure section  
9 389 is whether the plaintiff seeks some type of affirmative relief which, if granted, would injure  
10 or affect the interest of a third party not joined. (*Save Our Bay, Inc. v. San Diego Unified Port*  
11 *Dist.* (1996) 42 Cal.App.4th 686, 692.) Because the taxing entities, including community college  
12 districts, schools, and public safety organization would be deprived of the money that petitioners  
13 seek to “sequester,” it is plain that these entities should have been joined in this proceeding.

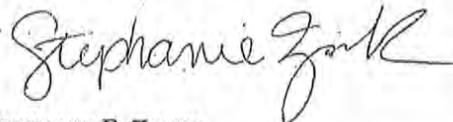
#### 14 CONCLUSION

15 For all the foregoing reasons, the Court should deny petitioners’ ex parte application for a  
16 temporary restraining order, and should decline to issue an order to show cause re: preliminary  
17 injunction.

18 Dated: May 29, 2012

Respectfully Submitted,

19 KAMALA D. HARRIS  
20 Attorney General of California  
21 PETER A. KRAUSE  
22 Supervising Deputy Attorney General



23 STEPHANIE F. ZOOK  
24 Deputy Attorney General  
25 *Attorneys for Respondent and Defendant*  
26 *Ana Matosantos, Director of the*  
27 *Department of Finance*

26 SA2012106441  
27 10904977.doc

**DECLARATION OF SERVICE BY E-MAIL and OVERNIGHT COURIER**

Case Name: **City of Palmdale v. Matosantos**  
No.: **34-2012-80001154**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the **Golden State Overnight**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On May 29, 2012, I served the attached

**OPPOSITION OF FINANCE DIRECTOR ANA MATOSANTOS TO EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND OSC RE: PRELIMINARY INJUNCTION; and**

**FINANCE DIRECTOR ANA MATOSANTOS'S REQUEST FOR JUDICIAL NOTICE**

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 29, 2012, at Sacramento, California.

\_\_\_\_\_  
Brenda Apodaca  
Declarant

\_\_\_\_\_  
*Brenda Apodaca*  
Signature

## SERVICE LIST

Guillermo A. Frias  
Attorney at Law  
Kane, Ballmer & Berkman  
515 South Figueroa Street, Suite 1850  
Los Angeles, CA 90071  
**E-mail Address:**  
[gfrias@kbblaw.com](mailto:gfrias@kbblaw.com)

William A. Johnson, Jr.  
Senior Deputy  
Office of County Counsel  
1600 Pacific Highway, Room 355  
San Diego, CA 92101  
**E-mail Address:**  
[William.Johnson@sdcounty.ca.gov](mailto:William.Johnson@sdcounty.ca.gov)

Marianne VanRiper  
Orange County Counsel  
333 W. Santa Ana Blvd., #407  
Santa Ana, CA 92701  
**E-mail Address:**  
[Marianne.vanriper@coco.ocgov.com](mailto:Marianne.vanriper@coco.ocgov.com)

Donna Ziegler  
Office of County Counsel  
1221 Oak Street, #450  
Alameda, CA 94612  
**E-mail Address:**  
[Donna.ziegler@acgov.org](mailto:Donna.ziegler@acgov.org)

Mark D. Servino  
Orange County Counsel  
333 W. Santa Ana Blvd., #407  
Santa Ana, CA 92701  
**E-mail Address:**  
[Mark.servino@coco.ocgov.com](mailto:Mark.servino@coco.ocgov.com)

Charles D. Lovejoy  
Associate County Counsel  
Los Angeles County Counsel  
Government Services Division  
648 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012  
**E-mail Address:**  
[Clovejoy@counsel.lacounty.gov](mailto:Clovejoy@counsel.lacounty.gov)

Patrick O'Connell  
Auditor-Controller  
Office of County Counsel  
1221 Oak Street  
Alameda, CA 94612  
**E-mail Address:**  
[Pat.oconnell@acgov.org](mailto:Pat.oconnell@acgov.org)

**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**

**MEETING DATE: OCTOBER 11, 2012**

**SUBJECT: TAKING CERTAIN ACTIONS PURSUANT TO CALIFORNIA  
HEALTH AND SAFETY CODE SECTION 34179.6 AND  
ADOPTION OF RESOLUTION NO. OB-12-11 IN CONNECTION  
WITH THE DUE DILIGENCE REVIEW FOR THE LOW AND  
MODERATE INCOME HOUSING FUND PREPARED  
PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE  
SECTION 34179.5.**

---

**BACKGROUND:**

On June 28, 2011, Assembly Bill No. X1 26 ("AB 26" or "Dissolution Act") was signed into law by the Governor of California which called for the dissolution of redevelopment agencies throughout the State and established the procedures by which dissolution was to be accomplished.

On December 29, 2011, the California State Supreme Court largely upheld the Dissolution Act as constitutional and reformed and extended certain dates by an additional four months, by which certain dissolution actions were to occur under the Dissolution Act. As a result of the Supreme Court's decision, on February 1, 2012, all California redevelopment agencies were dissolved, including the Imperial Beach Redevelopment Agency, and successor agencies to the former redevelopment agencies were established and tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the affairs of the former redevelopment agencies.

On June 27, 2012, the State Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012) as a trailer bill for the Fiscal Year 2012-2013 State budget package. Although the primary purpose of AB 1484 is to make technical and substantive amendments to the Dissolution Act based on issues that have arisen in the implementation of the Dissolution Act, AB 1484 also imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind-down process of former redevelopment agencies (including the required preparation of a due diligence review) (reference hereinafter to the Dissolution Act means AB 26 as amended by AB 1484).

In accordance with the Dissolution Act at Section 34179.5(a) of the California Health and Safety Code ("Health and Safety Code"), the Imperial Beach Redevelopment Agency Successor Agency ("Successor Agency") retained Lance Soll & Lunghard, LLP, a licensed accountant, approved by the San Diego County Auditor-Controller ("Auditor-Controller") and with experience and expertise in local government accounting, to conduct a due diligence review ("Due Diligence Review") to determine the unobligated balances of the Low and Moderate Income Housing Fund ("LMIHF") and all other funds and accounts available for transfer to taxing entities, in furtherance of the Successor Agency's obligations under Health and Safety Code Section 34177(d).

In accordance with the Dissolution Act at Health and Safety Code Section 34179.6(a), by October 1, 2012, the Successor Agency provided to the Oversight Board for the Successor Agency ("Oversight Board"), the Auditor-Controller, the State Controller, and the State Department of Finance ("DOF") the results of the Due Diligence Review for the LMIHF conducted pursuant to Health and Safety Code Section 34179.5 and specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities.

In accordance with the Dissolution Act at Health and Safety Code Section 34179.6(b), upon its receipt of the Due Diligence Review for the LMIHF, the Oversight Board convened a public comment session on October 2, 2012. The Oversight Board agreed to continue this public comment session to its meeting scheduled for October 11, 2012 in order to receive any public comment on the Due Diligence Review for the LMIHF before taking certain actions pursuant to Health and Safety Code Section 34179.6(c).

Pursuant to the Dissolution Act at Health and Safety Code Section 34179.6(c), by October 15, 2012, the Oversight Board shall review, approve, and transmit to the DOF and the Auditor-Controller the determination of the amount of cash and cash equivalents available for disbursement to taxing entities as determined according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF. In connection with this determination, the Oversight Board may adjust any amount provided in the Due Diligence Review for the LMIHF to reflect additional information and analysis. In addition, the Oversight Board shall consider any opinions offered by the Auditor-Controller on the Due Diligence Review results submitted by the Successor Agency. The Oversight Board may request from the Successor Agency any materials it deems necessary to assist in its review and approval of the determination.

Further, the Dissolution Act at Health and Safety Code Section 34179.6(c) allows the Oversight Board to authorize the Successor Agency to retain certain assets or funds identified in Procedures 6 through 9 of the Due Diligence Review for the LMIHF pursuant to Health and Safety Code Section 34179.5(c)(5)(B)-(E). With regard to this authorization, the Oversight Board shall identify to the DOF (i) the amount of funds authorized for retention, (ii) the source of those funds, and (iii) the purposes for which those funds are being retained. Such Oversight Board authorization for the Successor Agency to retain certain funds and assets shall be subject to the review and approval of the DOF.

#### **DISCUSSION:**

As stated above, by October 15, 2012, the Oversight Board must review, approve, and transmit to the DOF and the Auditor-Controller the determination of the amount of cash and cash equivalents available for disbursement to taxing entities as determined according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF. In this regard, Attachment B10 of the Due Diligence Review for the LMIHF identifies, pursuant to Procedure 10 in accordance with Health and Safety Code Section 34179.5, that the amount of cash and cash equivalents determined available for allocation to taxing entities is zero.

Based on the information and results set forth in the Due Diligence Review for the LMIHF, this Agenda Report, any additional information provided by Successor Agency staff, and any comments and other information received by the Oversight Board during the public meetings on this matter, the Successor Agency staff proposes that the Oversight Board review, approve, and transmit to the DOF and the Auditor-Controller the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF is zero, consistent with the results of the Due Diligence Review for the LMIHF. In connection with this determination, while the Successor Agency staff is not requesting any adjustment to any amount provided in the Due Diligence Review for the LMIHF, the Oversight Board has the authority to adjust any amount provided in the Due Diligence Review for the LMIHF to reflect additional information and analysis. In addition, the Oversight Board shall consider any opinions offered by the Auditor-Controller on the Due Diligence Review results for the LMIHF submitted by the Successor Agency. To date, no opinions from the Auditor-Controller on the Due Diligence Review for the LMIHF have been received by the Successor Agency. The Oversight Board may request from the Successor Agency any materials it deems necessary to assist in its review and approval of this determination.

Further, in accordance with Health and Safety Code Section 34179.6(c), the Successor Agency staff proposes that the Oversight Board authorize the Successor Agency's retention of the unspent housing bond proceeds in the amount of \$913,452, identified in Attachment B6 of the Due Diligence Review for the LMIHF. These unspent housing bond proceeds were identified pursuant to Procedure 6 in accordance with Health and Safety Code Section 34179.5(c)(5)(B).

As required by Health and Safety Code Section 34179.6(c):

- (i) The amount of unspent housing bond proceeds requested by Successor Agency staff to be authorized for retention by the Successor Agency is \$913,452;
- (ii) The source of those proceeds is the tax exempt Tax Allocation Revenue Bonds, 2003 Series A (Palm Avenue/Commercial Redevelopment Project) ("Housing Bonds") issued pursuant to an Indenture Trust, dated as of November 1, 2003, by and among the Imperial Beach Public Financing Authority, the Imperial Beach Redevelopment Agency and Wells Fargo Bank, National Association, as trustee, backed by the Low and Moderate Income Housing Fund, to provide money for loans by the former Redevelopment Agency for the purposes of increasing, improving, and preserving the community's supply of low and moderate income housing; and
- (iii) The purposes for which those funds are to be retained by the Successor Agency are:
  - (a) Approximately \$380,000 toward that certain Clean & Green Program, including a proportionate amount for project administration costs, which Program provides grants to very low, low and moderate-income single-family homeowners to improve energy and water efficiency and health and safety conditions; and
  - (b) Approximately \$533,000 in financial assistance to Habitat for Humanity, including a proportionate amount for project administration costs, for the acquisition and development of six (6) semi-detached for-sale houses located at 776 10<sup>th</sup> Donax in the City of Imperial Beach, California for ownership by low-income households ("Habitat Project").

The proposed Oversight Board authorization for the Successor Agency's retention of the unspent housing bond proceeds as described above is consistent with previous actions of the Successor Agency and the Oversight Board pursuant to the Dissolution Act in connection with

the use of these bond proceeds. Further, the proposed Oversight Board authorization for the Successor Agency's retention of the unspent housing bond proceeds as described above is subject to the review and approval of the DOF.

Upon receipt of the proposed Oversight Board's actions, and based on information provided by the Successor Agency and others, the DOF may adjust any amount associated with the determination of the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF. The DOF shall consider any findings or opinions of the Auditor-Controller and the State Controller. The DOF shall complete its review of the Oversight Board's actions taken pursuant to Health and Safety Code Section 34179.6(c) in connection with the LMIHF no later than November 9, 2012 and shall also notify the Oversight Board and Successor Agency of its decision to overturn any decision of the Oversight Board authorizing the Successor Agency's retention of certain assets and funds. The DOF shall provide the Oversight Board and the Successor Agency an explanation of its basis for overturning or modifying any findings, determinations, or authorizations of the Oversight Board.

Within five (5) business days of the date of the DOF's determinations, decisions, and explanations referenced above but in no event later than November 16, 2012, the Successor Agency and the City of Imperial Beach may request a meet and confer with the DOF to resolve any disputes regarding the amounts or sources of funds determined by the DOF. The DOF shall meet and confer with the requesting party and shall either confirm or modify its determinations and decisions within thirty (30) days of the request to meet and confer.

If any are identified, the Successor Agency shall transmit to the Auditor-Controller the amount of funds required pursuant to the DOF's determination within five (5) working days of receipt of notification of the DOF's determinations, decisions, and explanations if no meet and confer request is made. If the Successor Agency fails to remit to the Auditor-Controller the sums identified by the DOF by the deadline, the Dissolution Act provides for recovery of said sums through an offset of sales and use tax distributions to the City of Imperial Beach and/or an offset of property tax distributions to the City of Imperial Beach and/or the Successor Agency.

In light of the results of the Due Diligence Review conducted pursuant to Health and Safety Code Section 34179.5 for the LMIHF and the related determination of the amount of cash and cash equivalents available for allocation to taxing entities to be zero, the Successor Agency does not have any additional comments or recommendations to the Oversight Board at this time in connection with the Oversight Board's exercise of its authority pursuant to Health and Safety Code Section 34179.6(c) to adjust an amount provided in the Due Diligence Review for the LMIHF or to authorize the Successor Agency to retain additional assets or funds. However, for any reason, including without limitation the extent there are any modifications to the amounts provided in the Due Diligence Review for the LMIHF and/or the amount of cash or cash equivalents determined available for allocation to taxing entities, the Successor Agency does not waive any legal or equitable rights that the Successor Agency may have to make any comments or recommendations to the Oversight Board and/or other entity in connection with the Due Diligence Review, and to take any other actions, and the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity.

**ENVIRONMENTAL DETERMINATION:**

The activity proposed of the Oversight Board in connection with the Due Diligence Review for the LMIHF has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines. Such activity is not a "project" for purposes of CEQA, as that term is defined by Guidelines

Section 15378, because the activity 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 CEQA Guidelines.

**FISCAL IMPACT:**

There is currently a total of approximately \$913,000 of unspent housing bond proceeds remaining from the 2003 Housing Bond issuance that can be expended on the projects identified above and in accordance with the associated bond covenants. Since the proposed determination of the amount of cash and cash equivalents available for allocation to taxing entities is zero, as provided in the Due Diligence Review for the LMIHF, there is no negative fiscal impact as a result of the proposed actions.

**DEPARTMENT RECOMMENDATION:**

Successor Agency staff recommends that the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency:

1. Hear continued public comment on the Due Diligence Review for the LMIHF and close the public comment session.
2. Adopt Resolution Number OB-12-11 (i) reviewing and approving the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF is zero, consistent with the results of the Due Diligence Review for the LMIHF prepared by Lance Soll & Lunghard, LLP, (ii) authorizing the Successor Agency's retention of the unspent housing bond proceeds in the amount of \$913,452, identified in Attachment B6 of the Due Diligence Review for the LMIHF, pursuant to Procedure 6 in accordance with Health and Safety Code Section 34179.5(c)(5)(B); and (iii) approving related actions.

**DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.

  
\_\_\_\_\_  
Gregory Wade, Deputy Director

Attachments:

1. Due Diligence Review for the LMIHF
2. Resolution No. OB-12-11



**Successor Agency of the  
Former Imperial Beach Redevelopment Agency**

**Due Diligence Review  
of the Low and Moderate Income Housing Fund  
Pursuant to Sections 34179.5(c)(1) through 34179.5( c)(3)  
and Sections 34179.5(c)(5) through 34179.5(c)(6)  
of Assembly Bill No. 1484 of 2012**

**Lance Soll & Lunghard, LLP**

203 North Brea Blvd  
Suite 203  
Brea, CA 92821

41185 Golden Gate Circle  
Suite 103  
Murrieta, CA 92562

Successor Agency of the  
Former Imperial Beach Redevelopment Agency

Due Diligence Review  
of the Low and Moderate Income Housing Fund  
Pursuant to Sections 34179.5(c)(1) through 34179.5(c)(3)  
and Sections 34179.5(c)(5) through 34179.5(c)(6)  
of Assembly Bill No. 1484 of 2012



CERTIFIED PUBLIC ACCOUNTANTS

- Brandon W. Burrows, CPA
- David E. Hale, CPA, CFP  
*A Professional Corporation*
- Donald G. Slater, CPA
- Richard K. Kikuchi, CPA
- Susan F. Matz, CPA
- Shelly K. Jackley, CPA
- Bryan S. Gruber, CPA
- Deborah A. Harper, CPA

## INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

To the Successor Agency of the  
Former Imperial Beach Redevelopment Agency  
City of Imperial Beach, California

We have performed the procedures enumerated in Attachment A for the Low and Moderate Housing Fund, which were agreed to by the California State Controller's Office and the State of California Department of Finance (State Agencies) solely to assist you in ensuring that the dissolved redevelopment agency is complying with Assembly Bill 1484, Chapter 26, Section 17's amendment to health and safety code 34179.5. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Management of the successor agency is responsible for providing all the information obtained in performing these procedures. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representations regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

As stated above, the scope of this engagement was limited to performing the procedures identified in Attachment A, which specified the "List of Procedures for the Due Diligence Review" obtained from the California Department of Finance Website.

The results of the procedures performed are identified in Attachment B1 through B11.

We were not engaged to and did not conduct an audit, the objective of which would be the expression of a certified opinion as to the appropriateness of the results of the procedures performed. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to the Successor Agency.

This report is intended solely for the information and use of the Successor Agency Oversight Board, the Successor Agency and the applicable State Agencies, and is not intended to be, and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Brea, California  
September 25, 2012

**List of Procedures for Due Diligence Review of the Low and Moderate Housing Fund**

1. Obtain from the Successor Agency a listing of all assets that were transferred from the former redevelopment agency to the Successor Agency on February 1, 2012. Agree the amounts on this listing to account balances established in the accounting records of the Successor Agency. Identify in the Agreed-Upon Procedures (AUP) report the amount of the assets transferred to the Successor Agency as of that date.
2. If the State Controller's Office has completed its review of transfers required under both sections 34167.5 and 34178.8 and issued its report regarding such review, attach a copy of that report as an exhibit to the AUP report. If this has not yet occurred, perform the following procedures:
  - a. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the former redevelopment agency to the city, county, or city and county that formed the redevelopment agency for the period from January 1, 2011 through January 31, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what sense the transfer was required by one of the Agency's enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.
  - b. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the Successor Agency to the city, county, or city and county that formed the redevelopment agency for the period from February 1, 2012 through June 30, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what sense the transfer was required by one of the Agency's enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.
  - c. For each transfer, obtain the legal document that formed the basis for the enforceable obligation that required any transfer. Note in the AUP report the absence of any such legal document or the absence of language in the document that required the transfer.
3. If the State Controller's Office has completed its review of transfers required under both Sections 34167.5 and 34178.8 and issued its report regarding such review, attach a copy of that report as an exhibit to the AUP report. If this has not yet occurred, perform the following procedures:
  - a. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the former redevelopment agency to any other public agency or to private parties for the period from January 1, 2011 through January 31, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what sense the transfer was required by one of the Agency's enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.
  - b. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the Successor Agency to any other public agency or private parties for the period from February 1, 2012 through June 30, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what sense the transfer was required by one of the Agency's enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.
  - c. For each transfer, obtain the legal document that formed the basis for the enforceable obligation that required any transfer. Note in the AUP report the absence of any such legal document or the absence of language in the document that required the transfer.

**List of Procedures for Due Diligence Review for the Low and Moderate Housing Fund (Continued)**

4. Perform the following procedures:
  - a. Obtain from the Successor Agency a summary of the financial transactions of the Redevelopment Agency and the Successor Agency in the format set forth in the attached schedule for the fiscal periods indicated in the schedule. For purposes of this summary, the financial transactions should be presented using the modified accrual basis of accounting. End of year balances for capital assets (in total) and long-term liabilities (in total) should be presented at the bottom of this summary schedule for information purposes.
  - b. Ascertain that for each period presented, the total of revenues, expenditures, and transfers accounts fully for the changes in equity from the previous fiscal period.
  - c. Compare amounts in the schedule relevant to the fiscal year ended June 30, 2010 to the state controller's report filed for the Redevelopment Agency for that period.
  - d. Compare amounts in the schedule for the other fiscal periods presented to account balances in the accounting records or other supporting schedules. Describe in the report the type of support provided for each fiscal period.
5. Obtain from the Successor Agency a listing of all assets of the Low and Moderate Income Housing Fund as of June 30, 2012 for the report that is due October 1, 2012 and a listing of all assets of all other funds of the Successor Agency as of June 30, 2012 (excluding the previously reported assets of the Low and Moderate Income Housing Fund) for the report that is due December 15, 2012. When this procedure is applied to the Low and Moderate Income Housing Fund, the schedule attached as an exhibit will include only those assets of the Low and Moderate Income Housing Fund that were held by the Successor Agency as of June 30, 2012 and will exclude all assets held by the entity that assumed the housing function previously performed by the former redevelopment agency. Agree the assets so listed to recorded balances reflected in the accounting records of the Successor Agency. The listing should be attached as an exhibit to the appropriate AUP report.
6. Obtain from the Successor Agency a listing of asset balances held on June 30, 2012 that are restricted for the following purposes:
  - a. Unspent bond proceeds:
    - i. Obtain the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures, amounts set aside for debt service payments, etc.).
    - ii. Trace individual components of this computation to related account balances in the accounting records, or to other supporting documentation (specify in the AUP report a description of such documentation).
    - iii. Obtain from the Successor Agency a copy of the legal document that sets forth the restriction pertaining to these balances. Note in the AUP report the absence of language restricting the use of the balances that were identified by the Successor Agency as restricted.
  - b. Grant proceeds and program income that are restricted by third parties:
    - i. Obtain the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures).
    - ii. Trace individual components of this computation to related account balances in the accounting records, or to other supporting documentation (specify in the AUP report a description of such documentation).

**List of Procedures for Due Diligence Review for the Low and Moderate Housing Fund (Continued)**

- iii. Obtain from the Successor Agency a copy of the grant agreement that sets forth the restriction pertaining to these balances. Note in the AUP report the absence of language restricting the use of the balances that were identified by the Successor Agency as restricted.
  - c. Other assets considered to be legally restricted:
    - i. Obtain the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures).
    - ii. Trace individual components of this computation to related account balances in the accounting records, or to other supporting documentation (specify in the AUP report a description of such documentation).
    - iii. Obtain from the Successor Agency a copy of the legal document that sets forth the restriction pertaining to these balances. Note in the AUP report the absence of language restricting the use of the balances that were identified by Successor the Agency as restricted.
  - d. Attach the above mentioned Successor Agency prepared schedule(s) as an exhibit to the AUP report. For each restriction identified on these schedules, indicate in the report the period of time for which the restrictions are in effect. If the restrictions are in effect until the related assets are expended for their intended purpose, this should be indicated in the report.
7. Perform the following:
- a. Obtain from the Successor Agency a listing of assets as of June 30, 2012 that are **not** liquid or otherwise available for distribution (such as capital assets, land held for resale, long-term receivables, etc.) and ascertain if the values are listed at either purchase cost (based on book value reflected in the accounting records of the Successor Agency) or market value as recently estimated by the Successor Agency.
  - b. If the assets listed at 7(A) are listed at purchase cost, trace the amounts to a previously audited financial statement (or to the accounting records of the Successor Agency) and note any differences.
  - c. For any differences noted in 7(B), inspect evidence of disposal of the asset and ascertain that the proceeds were deposited into the Successor Agency trust fund. If the differences are due to additions (this generally is not expected to occur), inspect the supporting documentation and note the circumstances.
  - d. If the assets listed at 7(A) are listed at recently estimated market value, inspect the evidence (if any) supporting the value and note the methodology used. If no evidence is available to support the value and/or methodology, note the lack of evidence.
8. Perform the following:
- a. If the Successor Agency believes that asset balances need to be retained to satisfy enforceable obligations, obtain from the Successor Agency an itemized schedule of asset balances (resources) as of June 30, 2012 that are dedicated or restricted for the funding of enforceable obligations and perform the following procedures. The schedule should identify the amount dedicated or restricted, the nature of the dedication or restriction, the specific enforceable obligation to which the dedication or restriction relates, and the language in the legal document that is associated with the enforceable obligation that specifies the dedication of existing asset balances toward payment of that obligation.
    - i. Compare all information on the schedule to the legal documents that form the basis for the dedication or restriction of the resource balance in question.

**List of Procedures for Due Diligence Review for the Low and Moderate Housing Fund (Continued)**

- ii. Compare all current balances to the amounts reported in the accounting records of the Successor Agency or to an alternative computation.
  - iii. Compare the specified enforceable obligations to those that were included in the final Recognized Obligation Payment Schedule approved by the California Department of Finance.
  - iv. Attach as an exhibit to the report the listing obtained from the Successor Agency. Identify in the report any listed balances for which the Successor Agency was unable to provide appropriate restricting language in the legal document associated with the enforceable obligation.
- b. If the Successor Agency believes that future revenues together with balances dedicated or restricted to an enforceable obligation are insufficient to fund future obligation payments and thus retention of current balances is required, obtain from the Successor Agency a schedule of approved enforceable obligations that includes a projection of the annual spending requirements to satisfy each obligation and a projection of the annual revenues available to fund those requirements and perform the following procedures:
- i. Compare the enforceable obligations to those that were approved by the California Department of Finance. Procedures to accomplish this may include reviewing the letter from the California Department of Finance approving the Recognized Enforceable Obligation Payment Schedules for the six month period from January 1, 2012 through June 30, 2012 and for the six month period July 1, 2012 through December 31, 2012.
  - ii. Compare the forecasted annual spending requirements to the legal document supporting each enforceable obligation.
    - a. Obtain from the Successor Agency its assumptions relating to the forecasted annual spending requirements and disclose in the report major assumptions associated with the projections.
  - iii. For the forecasted annual revenues:
    - a. Obtain from the Successor Agency its assumptions for the forecasted annual revenues and disclose in the report major assumptions associated with the projections.
- c. If the Successor Agency believes that projected property tax revenues and other general purpose revenues to be received by the Successor Agency are insufficient to pay bond debt service payments (considering both the timing and amount of the related cash flows), obtain from the Successor Agency a schedule demonstrating this insufficiency and apply the following procedures to the information reflected in that schedule.
- i. Compare the timing and amounts of bond debt service payments to the related bond debt service schedules in the bond agreement.
  - ii. Obtain the assumptions for the forecasted property tax revenues and disclose major assumptions associated with the projections.
  - iii. Obtain the assumptions for the forecasted other general purpose revenues and disclose major assumptions associated with the projections.
- d. If procedures A, B, or C were performed, calculate the amount of current unrestricted balances necessary for retention in order to meet the enforceable obligations by performing the following procedures.

**List of Procedures for Due Diligence Review for the Low and Moderate Housing Fund (Continued)**

- i. Combine the amount of identified current dedicated or restricted balances and the amount of forecasted annual revenues to arrive at the amount of total resources available to fund enforceable obligations.
  - ii. Reduce the amount of total resources available by the amount forecasted for the annual spending requirements. A negative result indicates the amount of current unrestricted balances that needs to be retained.
  - iii. Include the calculation in the AUP report.
9. If the Successor Agency believes that cash balances as of June 30, 2012 need to be retained to satisfy obligations on the Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2012 through June 30, 2013, obtain a copy of the final ROPS for the period of July 1, 2012 through December 31, 2012 and a copy of the final ROPS for the period January 1, 2013 through June 30, 2013. For each obligation listed on the ROPS, the Successor Agency should add columns identifying (1) any dollar amounts of existing cash that are needed to satisfy that obligation and (2) the Successor Agency's explanation as to why the Successor Agency believes that such balances are needed to satisfy the obligation. Include this schedule as an attachment to the AUP report.
10. Include (or present) a schedule detailing the computation of the Balance Available for Allocation to Affected Taxing Entities. Amounts included in the calculation should agree to the results of the procedures performed in each section above. The schedule should also include a deduction to recognize amounts already paid to the County Auditor-Controller on July 12, 2012 as directed by the California Department of Finance. The amount of this deduction presented should be agreed to evidence of payment. The attached example summary schedule may be considered for this purpose. Separate schedules should be completed for the Low and Moderate Income Housing Fund and for all other funds combined (excluding the Low and Moderate Income Housing Fund).
11. Obtain a representation letter from Successor Agency management acknowledging their responsibility for the data provided to the practitioner and the data presented in the report or in any attachments to the report. Included in the representations should be an acknowledgment that management is not aware of any transfers (as defined by Section 34179.5) from either the former redevelopment agency or the Successor Agency to other parties for the period from January 1, 2011 through June 30, 2012 that have not been properly identified in the AUP report and its related exhibits. Management's refusal to sign the representation letter should be noted in the AUP report as required by attestation standards.

Procedure 1  
List of Assets Transferred from the Former Redevelopment Agency to the Successor Agency  
Low and Moderate Housing Fund  
As of February 1, 2012

---

ATTACHMENT B1

NO ASSETS WERE TRANSFERRED TO THE SUCCESSOR AGENCY

**Procedure 2  
Listing of Transfers (excluding payments for goods and services) to the City  
Low and Moderate Housing Fund  
For the Period from January 1, 2011 through June 30, 2012**

---

**From former Redevelopment Agency to City for January 1, 2011 through January 31, 2012**

No transfers were made to the City during this time period or they were diminimus

**From Successor Agency to City for February 1, 2012 through June 30, 2012**

No transfers were made to the City during this time period or they were diminimus

Procedure 3  
 Listing of Transfers (excluding payments for goods and services) to other public agencies or private parties  
 Low and Moderate Housing Fund  
 For the Period from January 1, 2011 through June 30, 2012

<u>Describe Purpose of Transfer</u>	<u>Enforceable Obligation (EO)/ Other Legal Requirement (LR)</u>	<u>Amount</u>	<u>Legal Documentation Obtained? (Y/N)</u>
-------------------------------------	--	---------------	--

From former Redevelopment Agency to other public agencies or private parties for January 1, 2011 through January 31, 2012

No transfers were made to other public agencies or private parties during this time period or they were diminimus

From Successor Agency to other public agencies or private parties for February 1, 2012 through June 30, 2012

Real Property - Per 34176 (e) (1)	LR	\$ 331,005	Y
Loans/Grants Receivable - Per 34176 (e) (3)	LR	7,520,629	Y
Advances - Per 34176 (e) (6)	LR	2,064,681	Y
	<b>Sub-total:</b>	<u>9,916,315</u>	

**Total Transfers to other public agencies or private parties for 1/1/2011 through 6/30/2012: \$ 9,916,315**

Procedure 4  
Summary of the financial transactions of Redevelopment Agency and Successor Agency  
Low and Moderate Housing Fund  
Per schedule attached to List of Procedures for Due Diligence Review

---

ATTACHMENT B4

NOT APPLICABLE TO THE LOW AND MODERATE HOUSING FUND DUE DILIGENCE REVIEW

**Procedure 5**  
**Listing of All Assets (excluding all assets held by the entity that assumed the housing function)**  
**Low and Moderate Housing Fund**  
**As of June 30, 2012**

ATTACHMENT B5

<u>Asset</u>	<u>Amount</u>
Cash	
248-101.00-00	913,035
<b>TOTAL CASH:</b>	<b>\$ 913,035</b>
<b>TOTAL ASSETS AT 6/30/2012:</b>	<b>\$ 913,035</b>

Procedure 6  
 Listing of Assets that are restricted  
 Low and Moderate Housing Fund  
 As of June 30, 2012

Item #	Description	Documentation Referenced	Amount	Purpose	Legal Documentation Obtained? (Y/N)
1	Unspent bond proceeds	Client's Housing Bond Reconciliation			
	a) 2003 TAB Housing Tax Exempt Bond		\$ 913,452	Housing Bond Proceeds issued prior to 12/31/2010	Y
	<b>TOTAL:</b>		<b>\$ 913,452</b>		

Procedure 7  
Listing of Assets That Are Not Liquid or Otherwise Available for Distribution  
Low and Moderate Housing Fund  
As of June 30, 2012

---

NO ASSETS ARE NOT LIQUID OR OTHERWISE AVAILABLE FOR DISTRIBUTION

Procedure 8a  
Listing of Assets (resources) that are dedicated or restricted for the funding of enforceable obligations  
Low and Moderate Housing Fund  
As of June 30, 2012

---

NO ASSETS ARE DEDICATED OR RESTRICTED FOR THE FUNDING OF ENFORCEABLE OBLIGATIONS

Procedure 8b  
Listing of Assets (resources) that need to be retained due to insufficient funding for the funding of enforceable obligations  
Low and Moderate Housing Fund  
As of June 30, 2012

---

ATTACHMENT B8b

NO ASSETS NEED TO BE RETAINED DUE TO INSUFFICIENT FUNDING FOR THE FUNDING OF ENFORCEABLE OBLIGATIONS

Procedure 8c  
Listing of Assets (resources) that need to be retained due to projected insufficient property tax revenues for bond debt payments  
Low and Moderate Housing Fund  
As of June 30, 2012

---

NO ASSETS NEED TO BE RETAINED DUE TO PROJECTED INSUFFICIENT PROPERTY TAX REVENUES FOR BOND PAYMENTS

**Procedure 9**

**ATTACHMENT B9**

**Listing of Assets (resources) that need to be retained due to projected insufficient property tax revenues for future ROPS  
Low and Moderate Housing Fund  
As of June 30, 2012**

---

**NO ASSETS NEED TO BE RETAINED DUE TO PROJECTED INSUFFICIENT PROPERTY TAX REVENUES FOR FUTURE ROPS**

**SUMMARY OF LOW-MOD BALANCES AVAILABLE FOR ALLOCATION TO AFFECTED TAXING ENTITIES**

Total amount of assets held by the successor agency as of June 30, 2012 (procedure 5)	\$	913,035
Add the amount of any assets transferred to the city or other parties for which an enforceable obligation with a third party requiring such transfer and obligating the use of the transferred assets did not exist (procedures 2 and 3)		-
		-
		To City
		To other parties
Less assets legally restricted for uses specified by debt covenants, grant restrictions, or restrictions imposed by other governments (procedure 6)		(913,452)
Less assets that are not cash or cash equivalents (e.g., physical assets) - (procedure 7)		-
Less balances that are legally restricted for the funding of an enforceable obligation (net of projected annual revenues available to fund those obligations) - (procedure 8)		-
Less balances needed to satisfy ROPS for the 2012-13 fiscal year (procedure 9)		-
Less the amount of payments made on July 12, 2012 to the County Auditor-Controller as directed by the California Department of Finance		-
	\$	(417) a

a) Amount to be remitted to County for disbursement to taxing entities is zero.



# City of Imperial Beach, California

ADMINISTRATIVE SERVICES DEPARTMENT

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 628-1365 Fax: (619) 424-3481

September 25, 2012

Lance, Soll & Lunghard, LLP  
 Certified Public Accountants  
 203 North Brea Boulevard, Suite 203  
 Brea, CA 92821-4056

We are providing this letter in connection with your performance of the Due Diligence Review of the Low and Moderate Housing Fund in accordance with Assembly Bill 1484 for the Successor Agency of the former Imperial Beach Redevelopment Agency. We confirm that we are responsible for the complete and fair presentation of the previously mentioned review in conformity with the listed procedures of the Assembly Bill 1484 Due Diligence Review as published by the State Department of Finance on August 27, 2012. We are also responsible for adopting sound accounting policies, establishing and maintaining effective internal control over financial reporting, and preventing and detecting fraud.

We confirm, to the best of our knowledge and belief, as of the date of this letter, the following representations made to you during your review:

1. We have made available to you:
  - a. In accordance with 34179.5(c)(1), the dollar value of all assets transferred from the former redevelopment agency to the successor agency on or about February 1, 2012.
  - b. In accordance with 34179.5(c)(2), the dollar value of all assets and cash and cash equivalents transferred after January 1, 2011, through June 30, 2012, by the redevelopment agency or the successor agency to the city, county, or city and county that formed the redevelopment agency and the purpose of each transfer. We have also provided the documentation of any enforceable obligation that required the transfer.
  - c. In accordance with 34179.5(c)(3), the dollar value of any cash or cash equivalents transferred after January 1, 2011, through June 30, 2012, by the redevelopment agency or the successor agency to any other public agency or private party and the purpose of each transfer. We have also provided documentation of any enforceable obligation that required the transfer.
  - d. In accordance with 34179.5(c)(4), the expenditure and revenue accounting information and have identified transfers and funding sources for the 2010–11 and 2011–12 fiscal years that reconciles balances, assets, and liabilities of the successor agency on June 30, 2012 to those reported to the Controller for the 2009–10 fiscal year.
  - e. In accordance with 34179.5(c)(5), a listing of all assets of the Low and Moderate Income Housing Fund as of June 30, 2012 for the report that is due October 1, 2012 and a listing of all assets of all other funds of the Successor Agency as of June 30, 2012 (excluding the previously reported assets of the Low and Moderate Income Housing Fund) for the report that is due December 15, 2012.

- f. In accordance with 34179.5(c)(5)(B), an itemized statement listing any amounts that are legally restricted as to purpose and cannot be provided to taxing entities. This could include the proceeds of any bonds, grant funds, or funds provided by other governmental entities that place conditions on their use.
  - g. In accordance with 34179.5(c)(5)(C), an itemized statement of the values of any assets that are not cash or cash equivalents. This may include physical assets, land, records, and equipment. For the purpose of this accounting, physical assets may be valued at purchase cost or at any recently estimated market value.
  - h. In accordance with 34179.5(c)(5)(D), an itemized listing of any current balances that are legally or contractually dedicated or restricted for the funding of an enforceable obligation that identifies the nature of the dedication or restriction and the specific enforceable obligation. In addition, we have provided a listing of all approved enforceable obligations that includes a projection of annual spending requirements to satisfy each obligation and a projection of annual revenues available to fund those requirements.
  - i. In accordance with 34179.5(c)(5)(E), an itemized list and analysis of any amounts of current balances that are needed to satisfy obligations that will be placed on the Recognized Obligation Payment Schedules for the current fiscal year.
2. There are no material transactions that have not been properly recorded in the accounting records underlying this Due Diligence Review.
  3. Management is not aware of any transfers (as defined by Section 34179.5) from either the former Redevelopment Agency or the Successor Agency to the City, other agencies or private parties for the period January 1, 2011 through June 30, 2012 that have not been identified in this report and related exhibits.
  4. We acknowledge our responsibility for the design and implementation of programs and controls to prevent and detect fraud.
  5. We have no knowledge of any fraud or suspected fraud affecting this Due Diligence Review involving:
    - a. Management,
    - b. Employees who have significant roles in internal control, or
    - c. Others where the fraud could have a material effect on this Due Diligence Review.
  6. We have no knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, or others.
  7. When applicable, we have taken timely and appropriate steps to remedy fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that you have reported to us.
  8. We have identified to you any previous audits, attestation engagements, performance audits, state controller reports or other studies related to the objectives of this Due Diligence Review and whether related recommendations have been implemented.
  9. The Successor Agency of the former Imperial Beach Redevelopment Agency has no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, or fund equity.

10. We are responsible for compliance with the laws, regulations, provisions of contracts and grant agreements applicable to us, and all provisions related to the dissolution of the Redevelopment Agency in accordance with ABx1 26 and AB 1484.
11. There are no known violations of:
  - a. Laws and regulations,
  - b. Provisions of contracts and grant agreements,
  - c. Provisions related to the dissolution of the Redevelopment Agency in ABx1 26 and AB 1484 whose effects should be considered for disclosure in this Due Diligence Review.
12. All bank accounts and investments associated with this review have been properly reflected in the general ledger accounting records.
13. No events, including instances of noncompliance, have occurred subsequent to the performance of this Due Diligence Review and through the date of this letter that would require adjustment to or disclosure in the aforementioned Due Diligence Review.

Signed: Michael M. Durr

Signed: Gary Brown

Title: Interim Finance Director

Title: CITY MANAGER

RESOLUTION NO. OB-12-11

**RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY TAKING CERTAIN ACTIONS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.6 IN CONNECTION WITH THE DUE DILIGENCE REVIEW FOR THE LOW AND MODERATE INCOME HOUSING FUND PREPARED PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.5.**

**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 of the City 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” or “Dissolution Act”) 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 (“Health and Safety 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 Health and Safety Code; and

**WHEREAS**, pursuant to the Dissolution Act, 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 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 the Dissolution Act, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under the Dissolution Act (“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 is to make technical and substantive amendments to the Dissolution Act based on issues that have arisen in the implementation of the Dissolution Act, 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 the required preparation of a due diligence review) (reference hereinafter to the Dissolution Act means AB 26 as amended by AB 1484); and

**WHEREAS**, the Dissolution Act at Health and Safety Code Section 34179 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 Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

**WHEREAS**, pursuant to the Dissolution Act at Health and Safety Code Section 34179.5, the Successor Agency retained Lance Soll & Lunghard, LLP, a licensed accountant approved by the San Diego County Auditor-Controller ("Auditor-Controller") and with experience and expertise in local government accounting, to conduct a due diligence review ("Due Diligence Review") to determine the unobligated balances of the Low and Moderate Income Housing Fund ("LMIHF") and all other funds and accounts available for transfer to taxing entities, in furtherance of the Successor Agency's obligations under Health and Safety Code Section 34177(d); and

**WHEREAS**, in accordance with the Dissolution Act at Health and Safety Code Section 34179.6(a), by October 1, 2012, the Successor Agency provided to the Oversight Board for the Successor Agency ("Oversight Board"), the Auditor-Controller, the State Controller, and the State Department of Finance ("DOF") the results of the Due Diligence Review for the LMIHF conducted pursuant to Health and Safety Code Section 34179.5 and specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities; and

**WHEREAS**, in accordance with the Dissolution Act at Health and Safety Code Section 34179.6(b), upon its receipt of the Due Diligence Review for the LMIHF, the Oversight Board convened a public comment session on October 2, 2012. The Oversight Board agreed to continue this public comment session to its meeting scheduled for October 11, 2012 in order to receive any public comment on the Due Diligence Review for the LMIHF before taking certain actions pursuant to Health and Safety Code Section 34179.6(c); and

**WHEREAS**, pursuant to the Dissolution Act at Health and Safety Code Section 34179.6(c), by October 15, 2012, the Oversight Board shall review, approve, and transmit to the DOF and the Auditor-Controller the determination of the amount of cash and cash equivalents available for disbursement to taxing entities as determined according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF. In connection with this determination, the Oversight Board may adjust any amount provided in the Due Diligence Review for the LMIHF to reflect additional information and analysis. In addition, the Oversight Board shall consider any opinions offered by the Auditor-Controller on the Due Diligence Review results submitted by the Successor Agency. The Oversight Board may request from the Successor Agency any materials it deems necessary to assist in its review and approval of the determination; and

**WHEREAS**, pursuant to the Dissolution Act at Health and Safety Code Section 34179.6(c), the Oversight Board may authorize the Successor Agency to retain certain assets or funds identified in Procedures 6 through 9 of the Due Diligence Review for the LMIHF pursuant to Health and Safety Code Section 34179.5(c)(5)(B)-(E), provided that the Oversight Board identifies to the DOF (i) the amount of funds authorized for retention, (ii) the source of those funds, and (iii) the purposes for which those funds are being retained. Such Oversight Board authorization for the Successor Agency's retention of certain funds and assets shall be subject to the review and approval of the DOF; and

**WHEREAS**, Attachment B10 of the Due Diligence Review for the LMIHF identifies, pursuant to Procedure 10 in accordance with Health and Safety Code Section 34179.5, that the amount of cash and cash equivalents determined available for allocation to taxing entities in connection with the LMIHF is zero; and

**WHEREAS**, based on the information and results set forth in the Due Diligence Review for the LMIHF, the Agenda Report for the proposed Oversight Board's actions, any additional information provided by Successor Agency staff, and any comments and other information received by the Oversight Board during the public meetings on this matter, the Successor Agency staff proposes that the Oversight Board review, approve, and transmit to the DOF and the Auditor-Controller the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF is zero, consistent with the results of the Due Diligence Review for the LMIHF.

**WHEREAS**, Attachment B6 of the Due Diligence Review for the LMIHF identifies, pursuant to Procedure 6 in accordance with Health and Safety Code Section 34179.5(c)(5)(B), unspent housing bond proceeds in the amount of \$913,452; and

**WHEREAS**, in accordance with Health and Safety Code Section 34179.6(c), the Successor Agency staff proposes that the Oversight Board authorize the Successor Agency's retention of the unspent housing bond proceeds in the amount of \$913,452, identified in Attachment B6 of the Due Diligence Review for the LMIHF; and

**WHEREAS**, the Successor Agency staff has advised the Oversight Board that, as required by Health and Safety Code Section 34179.6(c): (i) the amount of unspent housing bond proceeds to be authorized for retention by the Successor Agency is \$913,452; (ii) the source of those proceeds is the tax exempt Tax Allocation Revenue Bonds, 2003 Series A (Palm Avenue/Commercial Redevelopment Project) ("Housing Bonds") issued pursuant to an Indenture Trust, dated as of November 1, 2003, by and among the Imperial Beach Public Financing Authority, the Redevelopment Agency and Wells Fargo Bank, National Association, as trustee, backed by the Low and Moderate Income Housing Fund, to provide money for loans by the former Redevelopment Agency for the purposes of increasing, improving, and preserving the community's supply of low and moderate income housing; and (iii) the purposes for which those funds are to be retained by the Successor Agency are: (a) approximately \$380,000 toward that certain Clean & Green Program, including a proportionate amount for project administration costs, which Program provides grants to very low, low and moderate-income single-family homeowners to improve energy and water efficiency and health and safety conditions; and (b) approximately \$533,000 in financial assistance to Habitat for Humanity, including a proportionate amount for project administration costs, for the acquisition and development of six (6) semi-detached for-sale houses located at 776 10<sup>th</sup> Donax in the City of Imperial Beach, California for ownership by low-income households ("Habitat Project"); and

**WHEREAS**, the activity proposed of the Oversight Board in connection with the Due Diligence Review for the LMIHF has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines. Such activity is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity 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 CEQA Guidelines.

**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's approvals, authorizations and determinations as set forth in this Resolution are based upon the foregoing recitals, the Due Diligence Review for the LMIHF prepared by Lance Soll & Lunghard, LLP, information and documents provided by the Successor Agency staff, and any comments and other information received by the Oversight Board during the public meetings on this matter.
- Section 3.** The Oversight Board has reviewed and hereby approves the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF is zero, consistent with the results of the Due Diligence Review for the LMIHF prepared by Lance Soll & Lunghard, LLP.
- Section 4.** The Oversight Board hereby authorizes the Successor Agency's retention of the unspent housing bond proceeds in the amount of \$913,452, identified in Attachment B6 of the Due Diligence Review for the LMIHF, pursuant to Procedure 6 in accordance with Health and Safety Code Section 34179.5(c)(5)(B).

Based on information provided by Successor Agency staff, and as required by Health and Safety Code Section 34179.6(c), the Oversight Board hereby directs the Executive Director, or designee, of the Successor Agency to provide to the DOF the following information:

- (i) the amount of unspent housing bond proceeds authorized for retention by the Successor Agency is \$913,452;
- (ii) the source of those proceeds is the tax exempt Tax Allocation Revenue Bonds, 2003 Series A (Palm Avenue/Commercial Redevelopment Project) ("Housing Bonds") issued pursuant to an Indenture Trust, dated as of November 1, 2003, by and among the Imperial Beach Public Financing Authority, the Redevelopment Agency and Wells Fargo Bank, National Association, as trustee, backed by the Low and Moderate Income Housing Fund, to provide money for loans by the former Redevelopment Agency for the purposes of increasing, improving, and preserving the community's supply of low and moderate income housing; and
- (iii) the purposes for which those funds are being retained by the Successor Agency are:
  - (a) approximately \$380,000 toward that certain Clean & Green Program, including a proportionate amount for project administration costs, which Program provides grants to very low, low and moderate-income single-family homeowners to improve energy and water efficiency and health and safety conditions; and
  - (b) approximately \$533,000 in financial assistance to Habitat

for Humanity, including a proportionate amount for project administration costs, for the acquisition and development of six (6) semi-detached for-sale houses located at 776 10<sup>th</sup> Donax in the City of Imperial Beach, California for ownership by low-income households ("Habitat Project").

**Section 5.** The Oversight Board hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to (i) submit copies of this Resolution and actions taken herein, as approved and fully executed by the Oversight Board, to the DOF (electronically) and the Auditor-Controller no later than October 15, 2012; (ii) post a copy of this Resolution and actions taken herein, as approved and fully executed by the Oversight Board, on the Successor Agency's internet website; and (iii) take all other actions necessary pursuant to the Dissolution Act to file, post, mail, or otherwise deliver by electronic mail, internet posting, and/or hardcopy all notices and transmittals necessary or convenient in connection with the actions taken by this Resolution and related to the Due Diligence Review for the LMIHF.

**Section 6.** The Oversight Board hereby authorizes the Executive Director, or designee, of the Successor Agency to take such other actions and execute such other documents on behalf of the Successor Agency as are necessary to effectuate the intent of this Resolution, including, without limitation, submitting a meet and confer request with the DOF pursuant to Health and Safety Code Section 34179.6(e) to resolve any disputes regarding the amounts or sources of funds determined by the DOF in connection with the Due Diligence Review for the LMIHF.

**Section 7.** The Oversight Board determines that the activity proposed of the Oversight Board in connection with the Due Diligence Review for the LMIHF is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity 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 CEQA Guidelines.

**Section 8.** This Resolution shall take effect upon the date of its adoption, subject to the DOF's review pursuant to Health and Safety Code Sections 34179.6(d) and 34179(h).

**PASSED, APPROVED, AND ADOPTED** by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 11<sup>th</sup> day of October 2012, by the following vote:

**AYES: BOARDMEMBERS:**  
**NOES: BOARDMEMBERS:**  
**ABSENT: BOARDMEMBERS:**

\_\_\_\_\_  
**CHAIRPERSON**

**ATTEST:**

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