

RESOLUTION NO. OB-13-19

A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND AUTHORIZING AND DIRECTING THE SUCCESSOR AGENCY EXECUTIVE DIRECTOR TO EXECUTE, A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND FIRST SOUTHWEST COMPANY FOR FINANCIAL ADVISORY SERVICES FOR THE POTENTIAL REFUNDING OF THE SERIES 2003A TAX ALLOCATION REVENUE BONDS

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, debt service on the Series 2003A TABs has been and is repaid solely with tax increment revenues generated within the Project Areas. As of June 12, 2013, the Series 2003A TABs are outstanding in the amount of \$17,965,000, with annual principal maturities ranging from June 1, 2014 through June 1, 2033. These principal bond maturities can be prepaid on December 1, 2013, and on any subsequent date thereafter, without a prepayment penalty. The Series 2003A TABs have interest rates ranging from 5.00% to 6.00%; and

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

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

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

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

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

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

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

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

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

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

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

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

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

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Oversight Board hereby approves the Professional Services Agreement (“Agreement”) between the Successor Agency and First Southwest Company in substantial form as the Agreement attached as Exhibit “A”, for financial advisory services relating to the Series 2003A TABs and the Refunding Bonds, and compensation for services and accrued expenses in a total amount (i) not-to-exceed \$50,000 if the Refunding Bonds are issued prior to March 1, 2014, payment to First Southwest Company will be made by the Successor Agency through the Refunding Bonds Trustee/Escrow Agent and from the proceeds of the Refunding Bonds; or (ii) not-to-exceed \$19,000 if the Refunding Bonds are not issued before March 1, 2014, payment to First Southwest Company will be made by the Successor Agency from available funds including Redevelopment Property Tax Trust Fund distributions pursuant to an approved Recognized Obligation Payment Schedule (and the Successor Agency may seek payment or reimbursement of this cost as an enforceable obligation of the Successor Agency as part of its ROPS 13-14B).
- Section 3.** The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to execute the Agreement in substantial form as the Agreement attached as Exhibit “A”, upon the effectiveness of the Oversight Board’s actions approved by this Resolution pursuant to the Dissolution Act.
- Section 4.** The Executive Director, or designee, of the Successor Agency is hereby authorized to make non-substantive changes and amendments to the Agreement deemed necessary and as approved by the Successor Agency Executive Director and its legal counsel and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board.
- Section 5.** The Oversight Board determines that the activity approved by this Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines Section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines.
- Section 6.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

