RESOLUTION NO. SA-12-09

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE PAYMENT OF SUCCESSOR AGENCY FUNDS IN THE TOTAL AMOUNT OF $372,114.91 TO THE COUNTY OF SAN DIEGO AS DEMANDED BY THE COUNTY OF SAN DIEGO PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34183.5(b)(2)(A) DUE ON OR BEFORE JULY 12, 2012 AND MAKING THE PAYMENT UNDER PROTEST WITH A RESERVATION OF RIGHTS

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, AB x1 26 ("AB 26") and AB x1 27 ("AB 27") were signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law, including adding Part 1.8 (commencing with Section 34161) ("Part 1.80") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the California Health and Safety Code ("Health and Safety Code"); and

WHEREAS, the California Redevelopment Association and League of California Cities filed a lawsuit in the Supreme Court of California *(California Redevelopment Association, et al. v. Matosantos, et al.,* Case No. S194861) alleging that AB 26 and AB 27 were unconstitutional; and

WHEREAS, on December 29, 2011, the Supreme Court issued its opinion in the *Matosantos* case largely upholding as constitutional AB 26, invalidating as unconstitutional AB 27, and holding that AB 26 may be severed from AB 27 and enforced independently; and

WHEREAS, the Supreme Court generally reformed and revised the effective dates and deadlines for performance of obligations under Health and Safety Code Part 1.85 of AB 26 arising before May 1, 2012 to take effect four months later, while leaving the effective dates or deadlines for performance of obligations under Health and Safety Code Part 1.8 of AB 26 unchanged; and

WHEREAS, as a result of the Supreme Court's decision, and on February 1, 2012, all California redevelopment agencies were dissolved, successor agencies were established as successor agencies to the former redevelopment agencies pursuant to Health and Safety Code Section 34173, and successor agencies 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; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85, 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, the Successor Agency and Oversight Board reviewed and approved the Recognized Obligation Payment Schedules ("ROPS") for the periods of (1) January 1, 2012 through June 30, 2012 and (2) July 1, 2012 through December 31, 2012; and

WHEREAS, the State Department of Finance did not timely object to any items on the ROPS 1 or ROPS 2 of the Successor Agency; and

WHEREAS, on June 27, 2012, the State Legislature approved and the Governor signed AB 1484 which amended and added new provisions to the Health and Safety Code with respect to the dissolution process for redevelopment agencies; and

WHEREAS, on July 9, 2012, the County of San Diego ("County") sent the City a demand letter for the Successor Agency's payment in the total amount of $372,114.91 to the County by July 12, 2012 pursuant to Health and Safety Code section 34183.5(b)(2)(A), which attempts to distribute any residual amounts of funds that would have been paid to the taxing agencies if certain provisions of ABx1 26 had gone into effect according to its terms and had not been stayed and reformed by the California Supreme Court in January of 2012; and

WHEREAS, pursuant to AB 1484, if the payment demanded by the County is not made by the Successor Agency by July 12, 2012, then the Successor Agency is subject to penalties (of 10% of the amount owed plus 1.5% for each month payments are not made), the City is subject to penalties (of 10% of the amount owed plus 1.5% for each month the payments are late), the City will not receive the distribution of sales and use tax scheduled to be distributed on July 18, 2012, or any subsequent payment, up to the payment amount demanded by the County, and the Successor Agency is prohibited from making any payments on obligations other than bond debt service payments until full payment is made to the County; and

WHEREAS, because of the unduly harsh penalties and consequences to both the Successor Agency and the City if payment as demanded by the County is not made by the Successor Agency by July 12, 2012, staff of the Successor Agency proposes to make said payment to the County from a combination of housing tax increment funds and property tax held by the Successor Agency and to make said payment under protest and with a reservation of rights; and

WHEREAS, the Successor Agency believes that the County's payment demand and its calculation are inaccurate and illegal and the mechanism for its enforcement are illegal and unconstitutional. Therefore, the Successor Agency's payment to the County is to be made with a complete reservation of all rights, including but not limited to, challenging the accuracy and legality of the County's demand for payment and its calculation and the legality and constitutionality of the mechanism for its enforcement and any and all related legal and factual issues; and

WHEREAS, the action pursuant to this Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereinafter referred to as the "Guidelines"), and the City's environmental guidelines; and

WHEREAS, the action pursuant to this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the action pursuant to this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, pursuant to 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 Imperial Beach Redevelopment Agency Successor Agency, as follows:

1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

2. The adoption of this Resolution is not intended to waive, and shall not constitute a waiver, by the Successor Agency of any rights that the Successor Agency may have to challenge, through administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB X1 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 X1 26 and AB 1484, and/or the accuracy and legality of the County's demand for payment and its calculation and the legality and constitutionality of the mechanism for its enforcement and any and all related legal and factual issues.

3. The Executive Director, or designee, is hereby authorized and directed to make the payment in the total amount of $372,114.91 to the County as payment in full of the payment demanded by the County pursuant to Health and Safety Code section 34183.5(b)(2)(A) using a combination of housing tax increment funds and property tax, and to make said payment under protest and with a reservation of rights.

4. The Executive Director, or designee, is hereby authorized and directed 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.

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

6. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 11th day of July 2012, by the following vote:

AYES:	**BOARDMEMBERS:**	**BILBRAY, KING, BRAGG, SPRIGGS, JANNEY**
NOES:	**BOARDMEMBERS:**	**NONE**
ABSENT:	**BOARDMEMBERS:**	

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY