

RESOLUTION NO. 2012 – 16

RESOLUTION OF OVERSIGHT THE BOARD OF THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY APPROVING THE SUCCESSOR AGENCY'S RETENTION OF A LICENSED ACCOUNTANT TO PERFORM SERVICES RELATING TO PREPARATION OF THE DUE DILIGENCE REVIEW AND RELATED ACTIONS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.5, AND APPROVING THE SUCCESSOR AGENCY'S EXECUTIVE DIRECTOR TO TAKE ANY AND ALL ACTIONS AND EXECUTE ANY AND ALL DOCUMENTS, INCLUDING WITHOUT LIMITATION A PROFESSIONAL SERVICES AGREEMENT WITH THE SELECTED LICENSED ACCOUNTANT, AS ARE NECESSARY TO EFFECTUATE THE INTENT OF THIS RESOLUTION AND TO COMPLY WITH HEALTH AND SAFETY CODE SECTION 34179.5 ON BEHALF OF THE SUCCESSOR AGENCY

WHEREAS, the City Council of the City of National City (the "City") established the Redevelopment Agency of the City of National City (the "Redevelopment Agency") by Ordinance No. 1164, dated April 11, 1967, 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 established the Housing Authority of the City of National City (the "Housing Authority") by Ordinance No. 1484, dated October 14, 1975; and

WHEREAS, the City Council of the City established the Community Development Commission of the City of National City (the "CDC") by Ordinance No. 1484, dated October 14, 1975, and vested the CDC with all of the powers, duties and responsibilities of both the Redevelopment Agency and the Housing Authority, among other matters, for the purpose of enabling the CDC to operate and govern the Redevelopment Agency and the Housing Authority under a single board and as a single operating entity (the CDC acting in its capacity as the Redevelopment Agency is referred to herein as the "CDC-RDA", and the CDC acting in its capacity as the Housing Authority is referred to herein as the "CDC-HA"); and

WHEREAS, the City Council of the City has adopted redevelopment plans for National City's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, the CDC-RDA was responsible for the administration of redevelopment activities within the City; and

WHEREAS, AB 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 ("Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) 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 and the CDC-RDA, were dissolved on February 1, 2012, and successor agencies were designated and vested with

the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, pursuant to AB 26, the City Council of the City adopted Resolution No. 2012-15 on January 10, 2012, electing to be the Successor Agency to the CDC-RDA (the "Successor Agency"). The Successor Agency is a legal entity that exists separate and independent from the City. The Successor Agency formally named itself the "Successor Agency to the Community Development Commission as the National City Redevelopment 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, though not exclusively, set forth in Health and Safety Code Sections 34179 through 34181 of AB 26 as amended by AB 1484; and

WHEREAS, Health and Safety Code Section 34179.5 requires the Successor Agency to employ a licensed accountant, approved by the San Diego County Auditor-Controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities in furtherance of Health and safety Code Section 34177(d); and

WHEREAS, pursuant to Health and Safety Code Section 34177.3(b), the Successor Agency may create enforceable obligations to conduct the work of winding down the Redevelopment Agency, including, without limitation, hiring staff and acquiring necessary professional administrative services; and

WHEREAS, Health and Safety Code Section 34171(d)(1)(C) of AB 26, as amended by AB 1484, defines an "enforceable obligation" to include payments required by obligations imposed by state law, such as the requirement of Section 34179.5 to employ a licensed accountant, and further Health and Safety Code Section 34171(d)(1)(F) of AB 26, as amended by AB 1484, defines an "enforceable obligation" to include contracts or agreements necessary for the administration or operation of the Successor Agency. As of February 1, 2012, pursuant to AB 26, as amended by AB 1484, property tax revenues (former tax increment revenues) are allocated to the County of San Diego and then to the Successor Agency for payment of enforceable obligations of the Redevelopment Agency and the Successor Agency; 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 for the period ending June 30, 2012, (iii) submitted the draft ROPS to the State of California Controller’s Office and the State of California Department of Finance by April 15, 2012 for the period of January 1, 2012 through June 30, 2012, (iv) the draft ROPS as the first ROPS for submission to the State Controller’s Office and

the Department of Finance by April 15, 2012 for the period of January 1, 2012 through June 30, 2012, and (v) adopted the second ROPS covering the period from July 1, 2012 through December 31, 2012; 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, the third ROPS covering the period from January 1, 2013 through June 30, 2013 includes an obligation pertaining to the estimated cost to the Successor Agency in the amount of \$18,000 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, pursuant to Health and Safety Code Sections 34171(d)(1)(C), 34171(d)(1)(F), and 34177.3(b), the cost to the Successor Agency in the estimated amount of \$18,000 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 shall 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 of San Diego to pay enforceable obligations pursuant to a valid ROPS; and

WHEREAS, pursuant to Health and Safety Code Section 34183(a)(2) of AB 26, as amended by AB 1484, the County of San Diego is required to make a payment of property tax revenues 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, the action approved in this resolution has been reviewed by the Successor Agency 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; and

WHEREAS, the Successor Agency has determined, and the Oversight Board has also determined (to the extent it is required to do so) that the actions approved in this Resolution are not a “project” for purposes of CEQA, as that term is defined by Guidelines section 15378, because the actions approved in this Resolution are 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, on August 14, 2012 the Successor Agency adopted a resolution authorizing the retention of a licensed accountant to perform due diligence services and review related to Health and Safety Code section 34179.5.

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

NOW, THEREFORE, BE IT RESOLVED by the Successor Agency to the Community Development Commission as the National City Redevelopment Agency, as follows:

- Section 1. The foregoing recitals are true and correct and are incorporated herein as a substantive part of this Resolution.
- Section 2. The adoption of this Resolution by the Oversight Board is not intended to waive, 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 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 any and all related legal and factual issues, and the Successor Agency does expressly reserve any and all rights, privileges, and defenses available under law and equity, including the right to increase the estimated cost of \$18,000 to the Successor Agency, as necessary, for retaining 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.
- Section 3. The Oversight Board hereby approves, authorizes and directs the Successor Agency's Executive Director, or designee, to retain a licensed accountant, approved by the San Diego County Auditor-Controller and with experience and expertise in local government accounting, for an estimated cost of \$18,000, to perform the services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5.
- Section 4. The Successor Agency's Executive Director, or designee, is hereby authorized and directed to include on the third ROPS and any subsequent ROPS, as necessary, the costs to the Successor Agency for retaining a licensed accountant to perform the services relating to preparation of the due diligence review and related actions pursuant to Health and Safety Code Section 34179.5, in order for the Successor Agency to pay for and/or recover all such costs as an enforceable obligation of the Successor Agency payable from property tax revenues pursuant to AB 26, as amended by AB 1484.
- Section 5. The Oversight Board confirms the Successor Agency's determination (to the extent it is required to do so) that the services approved in this Resolution are 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. Notice of this Resolution shall be transmitted to the Department of Finance by electronic means and shall take effect at the time provided in Health and Safety Code Section 34179(h).
- Section 7. The Executive Director, or designee, is hereby authorized to take any and all actions and execute any and all documents, including without limitation a professional services agreement with the selected licensed accountant, as are necessary to effectuate the intent of this Resolution and to comply with Health and Safety Code Section 34179.5 on behalf of the Successor Agency.
- Section 8. The obligations of the Successor Agency shall, if and when required by law, be included in the Successor Agency's future Recognized Obligations Payment Schedules.

PASSED and ADOPTED this 15th day of August, 2012


Ron Morrison, Chairman

ATTEST:


Brad Raulston, Executive Director
Secretary to the Oversight Board

APPROVED AS TO FORM:


Oversight Board Counsel
Michael Houston, Esq.
Cummins & White, LLP