

RESOLUTION NO. 2012 – 15

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY APPROVING
THE SUCCESSOR AGENCY'S AUGUST 14, 2012 RECOGNIZED
OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD
JANUARY 1, 2013 THROUGH JUNE 30, 2013

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

WHEREAS, the City Council 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 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 Community Development Commission of the City of National City acting in its capacity as the Redevelopment Agency of the City of National City is referred to herein as the "CDC-RDA"; and

WHEREAS, pursuant to Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) signed by the California Governor on June 28, 2011 ("AB 26"), as modified by the California Supreme Court on December 29, 2011 pursuant to its decision in *California Redevelopment Association v. Matosantos*, which amended, among other statutes, the California Community Redevelopment Law (Health & Safety Code §§ 33000 *et seq.*) (the "CRL"), 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 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 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, on February 1, 2012, all assets, properties, contracts, leases, books and records, buildings and equipment of the Redevelopment Agency and the CDC-RDA were transferred by operation of law to the control of the Successor Agency and all authority, rights, powers, duties, and obligations previously vested in the Redevelopment Agency and the CDC-RDA were vested in the Successor Agency, for administration pursuant to Part 1.85 of AB 26; 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, the Successor Agency is required to undertake several actions pursuant to Part 1.85 of AB 26 as amended by AB 1484, including submitting additional information with the ROPS and in a changed format as set by the Department of Finance; and

WHEREAS, under AB 26 as amended by AB 1484, each successor agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

WHEREAS, 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, pursuant to AB 26, the ROPS shall be forward looking to the next six months, thus a recognized obligation payment schedule for the period of January 1, 2013 through June 30, 2013 ("ROPS 3") was prepared for consideration and approval by the Successor Agency; and

WHEREAS, according to Health and Safety Code Section 34177(l)(1) of AB 26, for each recognized obligation, the ROPS 3 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, and (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 provision of Part 1.85 of AB 26; and

WHEREAS, the ROPS 3 shall thereafter be submitted for review and approval to the Oversight Board, and submitted to the County Auditor/Controller and Department of Finance.; and

WHEREAS, it is the intent of AB 26 that the ROPS 3 serve as the designated reporting mechanism for disclosing the Successor Agency's bi-annual payment obligations by amount and source and, subsequent to the audit and approval of the ROPS 3 as specified in AB 26, 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, notwithstanding the provisions of Health and Safety Code Section 34177(a)(1), agreements between the City and the CDC have been included in the ROPS 3 because, among other things, the Successor Agency believes that they have been validated by operation of law prior to the Governor's signature of AB 26 on June 28, 2011; and

WHEREAS, the Successor Agency, approved a resolution on August 14, 2012 approving the ROPS 3, subject to the contingencies and reservations set forth herein; and

WHEREAS, the Successor Agency's ROPS 3, which is consistent with the requirements of the Health and Safety Code and other applicable law, is attached to this Resolution as Exhibit "A"; and

WHEREAS, the ROPS 3 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, among other obligations listed on the ROPS 3, the cost to the Successor Agency in the estimated amount of \$18,000 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 ROPS 3, the Successor Agency seeks to reenter into the former Redevelopment Agency Reimbursement Agreement with the City of National City, dated February 15, 2011, to reimburse the City for administrative and operational costs incurred by the City on behalf of the Successor Agency and the Successor Agency, and 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 ROPS 3, the Successor Agency entered into an agreement with the City of National City, dated August 14, 2012, for the City to provide administrative and project management services and administer and expend, on behalf of the Successor Agency, the bond proceeds (2011 Tax Allocation Bonds) in connection with the development and construction of the Coolidge Avenue Community Corridor Capital Improvement Project, and included this agreement on the ROPS 3 pursuant to Health and Safety Code Sections 34180(h), 34171(d)(1)(F), 34177(i), and when federal or state grants are conditioned on matching funds greater than 5 percent Oversight Board approval is required, and upon Oversight Board approval and effectiveness of the ROPS 3, the agreement will constitute an enforceable obligation of the Successor Agency payable from bond proceeds to pay enforceable obligations consistent with the bond indenture and pursuant to a valid ROPS 3; and

WHEREAS, among other obligations listed on the ROPS 3, the Successor Agency included in the ROPS 3 the purchase of prefabricated restrooms for the Las Palmas Park Facilities Plan Phase I and the Kimball Park Improvements which are consistent with the

use of the 2011 Tax Allocation Bonds issued in March 2011, and are included in ROPS 3
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pursuant to Health and Safety Code sections 34177(h) and 34177(i), and upon Oversight Board approval and effectiveness of the ROPS 3, the purchase will constitute an enforceable obligation of the Successor Agency payable from bond proceeds consistent with the bond indenture and pursuant to a valid ROPS 3; and

WHEREAS, among other obligations listed on the ROPS 3, the Successor Agency included in the ROPS 3 the Letter of Intent between the Agency and the YMCA committing \$4.5 Million in bond funds to provide for improvements to Las Palmas Park, which is consistent with the use of the 2011 Tax Allocation Bonds issued in March 2011, and are included in ROPS 3 pursuant to Health and Safety Code section 34177(i), and upon Oversight Board approval and effectiveness of the ROPS 3, the Letter of Intent will constitute an enforceable obligation of the Successor Agency payable from bond proceeds consistent with the bond indenture and pursuant to a valid ROPS 3; and

WHEREAS, among other obligations listed on the ROPS, the Successor Agency included on the ROPS 3 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 August 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, the Department of Finance periodically changes the format of reporting and the requirements, thus the Successor Agency staff may need to make changes to the ROPS 3 subsequent to the approval, to have it compliant with the changing Department of Finance requirements; and

WHEREAS, ROPS3 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 ROPS3 is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because the ROPS3 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 Boardm 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 and the Oversight Board's approval of ROPS3 is not intended to and shall not constitute a waiver by the Successor Agency of any rights the Successor Agency may have to challenge the effectiveness and/or legality of all or any portion of AB 26 or AB 1484 through administrative or judicial proceedings.
- Section 3. The Successor Agency's ROPS3, which is attached hereto as Exhibit "A", is approved except as specifically changed by the Oversight Board in approving this resolution.
- Section 4. As part of the approval of ROPS 3, the Oversight Board approves the estimated cost to the Successor Agency in the amount of \$18,000to 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 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; and
- Seciton 5. As part of the approval of ROPS 3, the Oversight Board approves the Successor Agency seeking to reenter into the former Redevelopment Agency Reimbursement Agreement with the City of National City, dated February 15, 2011, 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, 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. As part of the approval of ROPS 3, the Oversight Board approvesthe agreement between the Successor Agency and the City of National City, dated August 14, 2012, for the City to provide administrative and project management services and administer and expend, on behalf of the Successor Agency, the bond proceeds (2011 Tax Allocation Bonds) in connection with the development and construction of the Coolidge Avenue Community Corridor Capital Improvement Project, and such agreement shall constitute an enforceable obligation pursuant to a valid ROPS 3, pursuant to Health and Safety Code Sections 34180(h),

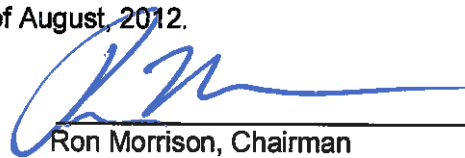
34171(d)(1)(F), 34177(i) of AB 26 as amended by AB 1484; and

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- Section 7. As part of the approval of ROPS 3, the Oversight Board approves the Successor Agency purchase of prefabricated restrooms for the Las Palmas Park Facilities Plan Phase I and the Kimball Park Improvements which are consistent with the use of the 2011 Tax Allocation Bonds issued in March 2011, and such purchase order shall constitute an enforceable obligation pursuant to Health and Safety Code sections 34177(h) and 34177(i) of AB 26 as amended by AB 1484; and
- Section 8. As part of the approval of ROPS 3, the Oversight Board approves the Letter of Intent between the Successor Agency and the YMCA committing \$4.5 Million in bond funds to provide for improvements to Las Palmas Park, which is consistent with the use of the 2011 Tax Allocation Bonds issued in March 2011, and such Letter of Intent shall constitute an enforceable obligation of the Successor Agency pursuant to Health and Safety Code section 34177(i) of AB 26 as amended by AB 1484; and
- Section 9. As part of the approval of ROPS 3, the Oversight Board 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 August 2012 debt service payments on bond issuances, and such loans/advances constitute enforceable obligations pursuant to Health and Safety Code sections 34171(d)(1)(G) and 34180(a) of AB 26 as amended by AB 1484; and
- Section 10. The Executive Director, or designee, is hereby authorized and directed to:
- (i) 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; and
 - (ii) take such other actions and execute such other documents as are necessary to effectuate the intent of AB 26 and AB 1484 in regard to ROPS 3, including modifying and/or amending the ROPS 3 administratively to conform to the direction, guidance, and/or requirements related to ROPS 3 by of the Department of Finance.
- Section 11. The Oversight Board confirms the Successor Agency's determination (to the extent it is required to do so) that this ROPS3 is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because ROPS3 and 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 12. This Resolution shall take effect upon the date of its adoption.

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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