

RESOLUTION NO. SA-14-43

A RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING, AND RECOMMENDING TO ITS OVERSIGHT BOARD APPROVAL OF, AN AGREEMENT REGARDING RETENTION AND EXPENDITURE OF BOND PROCEEDS FROM 2010 TAX ALLOCATION BONDS BETWEEN THE SUCCESSOR AGENCY AND THE CITY OF IMPERIAL BEACH AS AN ENFORCEABLE OBLIGATION, AND APPROVING RELATED ACTIONS

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 Redevelopment Agency had the responsibility of implementing the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area, duly adopted by the City Council of the City ("City Council") on February 7, 1996 by Ordinance No. 96-901, as amended by the City Council on July 18, 2001 by the adoption of Ordinance No. 01-970, as further amended by the City Council on December 20, 2006 by the adoption of Ordinance No. 2006-1066, and as further amended by the City Council on March 19, 2008 by the adoption of Ordinance No. 2008-1066 ("Redevelopment Plan"); and

WHEREAS, pursuant to a Trust Indenture dated as of November 1, 2010 and executed by and between the Redevelopment Agency and Wells Fargo Bank, National Association ("Trustee"), the Redevelopment Agency issued the 2010 Tax Allocation Bonds (Palm Avenue/Commercial Redevelopment Project), in the aggregate principal amount of \$21,595,000 ("2010 Tax Allocation Bonds"). In connection with the refunding of two loan agreements related to the Tax Allocation Bonds, 2003 Series A (Palm Avenue/Commercial Redevelopment Project), the Trust Indenture was supplemented by a First Supplemental Indenture of Trust dated December 1, 2013 executed by and between the Successor Agency (defined below) and the Trustee; and

WHEREAS, pursuant to Page 4 of the Official Statement for the 2010 Tax Allocation Bonds, the 2010 Tax Allocation Bonds are required to be used to provide financing for projects of benefit to the Palm Avenue/Commercial Redevelopment Project Area in accordance with the Redevelopment Plan and the Redevelopment Law. More specifically, the 2010 Tax Allocation Bonds are to be used for Hotel Redevelopment Project; Street and Alley Improvements; Airfield Property Improvements; Library Expansion; Palm Avenue Corridor Improvements; City Facility Upgrades; and other projects within or of benefit to the Palm Avenue/Commercial Redevelopment Project Area in the Redevelopment Agency's discretion ("Financing Plan"); 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 to the California Health and Safety Code ("H&S 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 H&S 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 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, H&S Code Section 34179 of AB 26 establishes a seven (7) member local entity with respect to each successor agency with fiduciary responsibilities to holders of enforceable obligations and taxing entities that benefit from distributions of property taxes, 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 H&S Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in H&S Code Sections 34179 through 34181 of AB 26; and

WHEREAS, AB 26 and related H&S Code provisions were subsequently amended. AB 26 and all subsequent amendments are hereinafter referred to as the "Dissolution Act"; and

WHEREAS, on April 12, 2013, the California Department of Finance ("DOF") issued a Finding of Completion to the Successor Agency pursuant to H&S Code Section 34179.7 of the Dissolution Act, which specifically authorizes the Successor Agency to utilize bond proceeds issued prior to January 1, 2011 in a manner consistent with the original bond covenants pursuant to H&S Code Section 34191.4(c); and

WHEREAS, H&S Code Section 34191.4(c) of the Dissolution Act provides that once a Finding of Completion has been issued by the DOF, bond proceeds derived from bonds issued on or before December 31, 2010 shall be used for the purposes for which the bonds were sold, and bond proceeds in excess of the amounts needed to satisfy approved enforceable obligations shall thereafter be expended in a manner consistent with the original bond covenants. An expenditure made pursuant to H&S Code Section 34191.4(c) shall constitute the creation of excess bond proceeds obligations to be paid from the excess bond proceeds. Excess bond proceeds obligations shall be listed separately on a Recognized Obligation Payment Schedule ("ROPS"); and

WHEREAS, as of August 6, 2014, a total amount of \$1,674,452 in available bond proceeds ("Available Bond Proceeds") from the 2010 Tax Allocation Bonds of the Redevelopment Agency remain to be spent pursuant to the Trust Indenture and Official Statement of the 2010 Tax Allocation Bonds. Of this amount, certain Available Bond Proceeds in the amount of \$1,274,452 were delivered to the Successor Agency by the Trustee during the ROPS 13-14B period for expenditure toward projects consistent with the Trust Indenture and the Official Statement and are currently retained by the Successor Agency, and certain Available Bond Proceeds in the approximate amount of \$400,000 were previously transferred to the City for expenditure toward a specific project but remain unspent and available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement; and

WHEREAS, in addition, as of August 6, 2014, an approximate amount of \$1,800,000 of

other bond proceeds (the "Other Bond Proceeds") from the 2010 Tax Allocation Bonds of the Redevelopment Agency remain to be spent pursuant to the Trust Indenture and Official Statement of the 2010 Tax Allocation Bonds and have been allocated for the Bikeway Village project (referred in the Trust Indenture and Official Statement as the Airfield Property Improvements). The Other Bond Proceeds were previously transferred to the City for expenditure toward the Bikeway Village project but remain unspent and may be available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement. The City has applied for grant funds that, if awarded, may reduce the amount of Other Bond Proceeds needed for the Bikeway Village project in the approximate amount of \$1,400,000; such portion of the Other Bond Proceeds that would become available to be reallocated toward different projects consistent with the Trust Indenture and the Official Statement upon the awarding of such grant shall be referred to herein as the "Potentially Available Bond Proceeds"; and

WHEREAS, the Available Bond Proceeds and the Potentially Available Bond Proceeds shall collectively be referred to herein as the "Bond Proceeds"; and

WHEREAS, the Successor Agency and the City desire to enter into an "Agreement Regarding Retention and Expenditure of Bond Proceeds from 2010 Tax Allocation Bonds" ("Agreement") in order for the City to receive and retain the Bond Proceeds for the City's use and expenditure of the Bond Proceeds consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds and all applicable covenants therein, and the requirements of the Redevelopment Law applicable to the expenditure of redevelopment funds; and

WHEREAS, under the Agreement, the projects for which the Bond Proceeds are anticipated to be expended include, without limitation, approximately \$1,274,452 for use toward the improvement of fourteen (14) unpaved alleys within the Palm Avenue/Commercial Redevelopment Project, and up to \$1,800,000 (consisting of approximately \$400,000 in Available Bond Proceeds and up to \$1,400,000 in Potentially Available Bond Proceeds) for use toward the development of the proposed Tower23 Hotel, or for other projects as otherwise permitted by the 2010 Tax Allocation Bonds; and

WHEREAS, pursuant to H&S Code Sections 34178(a) and 34180(h) of the Dissolution Act, the Successor Agency may enter into the Agreement with the City upon obtaining the approval of the Oversight Board. In this regard, upon the Successor Agency's approval of the Agreement, the Successor Agency will submit the Agreement to the Oversight Board for consideration of approval at the Oversight Board meeting scheduled for August 13, 2014. Thereafter, at subsequent meetings of the Successor Agency and Oversight Board, respectively, the Successor Agency and the Oversight Board will each consider the approval of the ROPS 14-15B for the period of January 1, 2015 through June 30, 2015, which ROPS 14-15B will include the expenditure of the Bond Proceeds pursuant to the Agreement as an enforceable obligation; and

WHEREAS, the activity proposed for approval by 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 for approval by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity proposed by 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 Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The Successor Agency determines that the foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Successor Agency determines that the proposed use and expenditure of the Bond Proceeds under the Agreement are consistent with the purposes set forth in the Trust Indenture and the Official Statement for the 2010 Tax Allocation Bonds, and that there are sufficient Bond Proceeds available for the designated purposes.
- Section 3.** The Successor Agency approves, and recommends to its Oversight Board approval of, the Agreement between the Successor Agency and the City as an enforceable obligation.
- Section 4.** The Successor Agency authorizes and directs, and recommends to its Oversight Board that it authorize and direct, the Executive Director of the Successor Agency or designee (i) to take all actions and to execute any and all documents, instruments, and agreements necessary or desirable on behalf of the Successor Agency, as approved by the Executive Director and the Successor Agency General Counsel, including without limitation the Agreement, in order to implement and effectuate the Agreement and all other actions approved by this Resolution, including, without limitation, approving changes, implementations, or revisions to documents, instruments, and agreements as determined necessary by the Executive Director, or designee; (ii) to administer the Successor Agency's obligations, responsibilities, and duties to be performed pursuant to this Resolution and all documents, instruments, and agreements required by the Agreement; (iii) to include the expenditure of the Bond Proceeds pursuant to this Agreement on the ROPS 14-15B as an enforceable obligation; and (iv) to provide such notifications as required by the Dissolution Act.
- Section 5.** 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 Successor Agency declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 6.** 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 the Dissolution Act, any determinations rendered or actions or omissions to act by any public agency or government entity or

division in the implementation of the Dissolution Act, and any and all related legal and factual issues, and the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity.

Section 7. The Successor Agency 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 the activity approved by 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 8. 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 6th day of August 2014, by the following vote:

AYES:	BOARD MEMBERS:	BRAGG, SPRIGGS, BILBRAY, PATTON, JANNEY
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	NONE

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, MMC
SECRETARY