

RESOLUTION NO. SA-12-07

RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING THE ADVANCE AND ALLOCATION OF AN ADDITIONAL PORTION OF TAX INCREMENT FUNDS ALLOCATED FOR HOUSING PURPOSES IN THE TOTAL AMOUNT OF \$369,637 TOWARD PAYMENT OF THE DEBT SERVICE ON THE 2003 TAX ALLOCATION BONDS SERIES DUE ON OR BEFORE MAY 25, 2012 UPON CERTAIN CONDITIONS

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, in accordance with Health and Safety Code Section 34177(l)(2)A) of AB 26, the Successor Agency adopted the draft ROPS on February 15, 2012 by Resolution No. SA-12-02, for the period ending June 30, 2012, as modified administratively by the Executive Director pursuant to Resolution No. SA-12-02; and

WHEREAS, on or about April 4, 2012 by Resolution No. SA-12-05, the Successor Agency amended the draft ROPS as the first ROPS, for submission to the State Controller's Office and the Department of Finance by April 15, 2012, and revised the ROPS to reflect the time period of January 1, 2012 through June 30, 2012 as required by Health and Safety Code Section 34177(l)(3) of AB 26 and to clarify and add certain information relating to the recognized obligations set forth in the ROPS; and

WHEREAS, pursuant to Health and Safety Code Section 34177(l)(3) of AB 26, the first ROPS was submitted 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; and

WHEREAS, pursuant to Health and Safety Code Section 34177(l)(2)(C) of AB 26, the first ROPS was submitted to the County Auditor-Controller and both the State Controller's Office and the Department of Finance and was posted on the Successor Agency's internet website; and

WHEREAS, Health and Safety Code Section 34177(a)(1) of AB 26 requires the Successor Agency to continue to make payments due for enforceable obligations and, from February 1, 2012 until a ROPS becomes operative, only payments required pursuant to the Enforceable Obligations Payment Schedule shall be made; and Health and Safety Code Section 34177(a)(3) of AB 26 provides that commencing on May 1, 2012, only those payments listed in the ROPS may be made by the Successor Agency from the funds specified in the ROPS; and

WHEREAS, the first ROPS provides that the debt service on the 2003 Tax Allocation Bonds Series ("2003 Bonds") due in May 2012 shall be made from both non-housing funds and housing funds because the 2003 Bonds are secured in the proportion of 80% by non-housing tax increment funds and in the proportion of 20% by housing tax increment funds. The debt service payment on the 2003 Bonds totals \$1,011,455 and is due on or before May 25, 2012; and

WHEREAS, the Successor Agency had intended on allocating funds from the property tax payment statutorily required to be distributed by the San Diego County Auditor-Controller ("County") to the Successor Agency on May 16, 2012, toward the debt service payment on the 2003 Bonds; and

WHEREAS, Health and Safety Code Section 34183(a)(2)-(3) obligates the County to allocate moneys in the Redevelopment Property Tax Trust Fund ("RPTTF") maintained for the Successor Agency, on May 16, 2012 and June 1, 2012, and each January 16 and June 1 thereafter, for payments listed on the ROPS for each six (6) month fiscal period and for payment of the administrative cost allowance, subject to pass-through payments required to be made to taxing entities in accordance with Section 34183(a)(1); and

WHEREAS, Health and Safety Code Section 34185 obligates the County to transfer from the RPTTF into the Redevelopment Obligation Retirement Fund of the Successor Agency, an amount of property tax revenues equal to that specified in its ROPS as payable from the RPTTF, on May 16, 2012 and June 1, 2012, and on each January 16 and June 1 thereafter; and

WHEREAS, pursuant to Health and Safety Code Section 34183(b), the Successor Agency issued two separate notices to the County advising the County that the Successor Agency does not have enough funds available to pay all enforceable obligations listed on the ROPS for the period ending June 30, 2012 and on the ROPS for the period ending December 31, 2012 ("Notices of Insufficient Funds"); and

WHEREAS, notwithstanding the statutory requirements for the County to make a payment of property taxes to the Successor Agency on May 16, 2012, notwithstanding the Notices of Insufficient Funds issued to the County by the Successor Agency, and notwithstanding specific provisions of AB 26 that state the Legislative intent of AB 26 was not for the County to immediately change the directional flow of payments of former tax increment or cause defaults on enforceable obligations of the former Redevelopment Agency and the Successor Agency, the County has advised the Successor Agency that it will not be making a payment of property taxes to the Successor Agency on May 16, 2012 but will make such a payment on June 1, 2012, which date however is after the May 25, 2012 due date of the debt service payment on the 2003 Bonds; and

WHEREAS, in an attempt for the Successor Agency to timely make the debt service payment on the 2003 Bonds on or before May 25, 2012, the Successor Agency will fund 20% of the debt service payment with tax increment funds allocated for housing purposes in the total amount of \$202,291, which amount is in the same proportion that housing funds secure the 2003 Bonds. Similarly, the remaining 80% of the debt service payment would presumably be funded using non-housing funds in the total amount of \$809,164. However, the Successor Agency has only \$439,527 of non-housing funds in its account. Therefore, there exists a remaining outstanding balance of \$369,637 required for the full payment of debt service on the 2003 Bonds due on or before May 25, 2012; and

WHEREAS, in the event that the County refuses to distribute to the Successor Agency a payment of property taxes at least in the amount of \$369,637 prior to the due date of May 25, 2012 for the payment of debt service on the 2003 Bonds, the Successor Agency proposes to advance and allocate an additional portion of tax increment funds allocated for housing purposes in the total amount of \$369,637 toward payment of the debt service on the 2003 Bonds and to use good faith efforts to replenish such funds by an equal amount upon receipt from the County of the June 1, 2012 property tax payment available for such purposes; and

WHEREAS, the Successor Agency's proposed advance and allocation of an additional portion of tax increment funds allocated for housing purposes in the total amount of \$369,637 toward payment of the debt service on the 2003 Bonds is based on the following justifications: (1) the Successor Agency has determined that there are no other funds available to the Successor Agency to make the full debt service payment by May 25, 2012; (2) the short term use of these funds as an advance will prevent a default on the 2003 Bonds as a whole (including the housing component of the bonds) and will preserve the tax exempt status of the 2003 Bonds; (3) the use of these funds is solely an advance and not a permanent use since the Successor Agency will use good faith efforts to replenish these funds by an equal amount within

a few weeks later upon the Successor Agency's receipt of the June 1, 2012 property tax payment from the County available for such purposes; (4) these funds are available as a reserve for payment of debt service on the 2003 Bonds and are needed by the Successor Agency to make the full debt service payment on the 2003 Bonds by May 25, 2012 in order to avoid a default; and (5) the alternative of defaulting on the 2003 Bonds will negatively affect the financial creditworthiness of the Successor Agency and possibly the City and would foreseeably create long term devastating financial impacts on the Successor Agency and possibly the City; 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:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 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 the effectiveness and/or legality of all or any portion of AB X1 26, or 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, through administrative or judicial proceedings.
- Section 3.** In the event that the County refuses to provide to the Successor Agency a payment of property taxes at least in the amount of \$369,637 prior to the due date of May 25, 2012 for the payment of debt service on the 2003 Bonds, the Executive Director, or designee, is hereby authorized and directed to advance and allocate an additional portion of tax increment funds allocated for housing purposes in the total amount of \$369,637 toward payment of the debt service on the 2003 Bonds and to use good faith efforts to replenish such funds by an equal amount upon receipt from the County of the June 1, 2012 property tax payment available for such purposes.
- Section 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.

Section 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.

Section 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 16th day of May 2012, by the following vote:

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



JAMES C. JANNEY
CHAIRPERSON

ATTEST:



JACQUELINE M. HALD, MMC
SECRETARY