AGENDA

OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY
REGULAR MEETING

MONDAY, OCTOBER 16, 2017 AT 3:00 P.M.

Civic San Diego Board Room
401 B Street, Suite 400, San Diego, CA 92101

Board Members
James Davies, City of San Diego appointee
Andra Donovan, Esq., County Board of Education appointee
Dr. Bonnie Ann Dowd, California Community Colleges appointee
Sandy Kerl, Special District Appointee, San Diego County Water Authority
Kaye Hobson, County of San Diego appointee
Mark Nelson, City of San Diego appointee
Supervisor Ron Roberts, County of San Diego appointee

Adoption Agenda, Consent Items
Any Consent items listed below are considered to be routine. These items are indicated on the agenda by a preceding asterisk (*). Because these items may be handled quickly, if you wish to be heard, submit your Speaker Slip form prior to the start of the meeting.

Non-Agenda Public Comment
This portion of the agenda provides an opportunity for members of the public to address the Board on items of interest within the jurisdiction of the Board. (Comments relating to items on today’s docket are to be taken at the time the item is heard.)

Time allotted to each speaker is determined by the Chair; however, comments are limited to no more than three (3) minutes total per subject regardless of the number of those wishing to speak. Submit requests to speak to the Clerk prior to the start of the meeting. Pursuant to the Brown Act, no discussion or action, other than a referral, shall be taken by the Board on any issue brought forth under “Non-Agenda Public Comment.”

To Address Oversight Board on an Agenda Item
Speaker forms are available prior to each meeting. Fill out a Speaker Slip and submit to the Clerk. Speakers will be called by name to address the Oversight Board when the item is heard. Time allotted to each speaker is determined by the Chair and, in general, is limited to three (3) minutes; moreover, collective testimony by those who support or oppose an item shall be limited to no more than fifteen (15) minutes per side.

The numerical order of items on this agenda is for convenience of reference. Items may be taken out of order upon request of the Chair or Board Members.

Members of the public wishing to address the Board must submit a Speaker Slip to the Clerk prior to the agenda item being called. Please note that Speaker Slips will not be accepted once the item is called. Speaker Slips on any item should be submitted at the beginning of each Board meeting.
Assistance for the Disabled

This information is available in alternative formats upon request. To request an agenda in Braille, large print, or cassette or to request a sign language or oral interpreter for the meeting, call Michele O’Malia at 619-235-2200 prior to the meeting to ensure availability.

Order of Business

CALL THE MEETING TO ORDER

CHAIR, BOARD, OVERSIGHT BOARD CONTACT COMMENT

APPROVAL OF BOARD MINUTES
The Board minutes for June 19, 2017 will be approved by Unanimous Consent unless pulled for discussion.

NON-AGENDA PUBLIC COMMENT

Adoption AGENDA, CONSENT ITEMS

*ITEM 1 Report and Resolution from the Successor Agency regarding ESTABLISHING A SCHEDULE FOR FUTURE PUBLIC MEETINGS OF THE OVERSIGHT BOARD

ITEM 2 Report and Resolution from the Successor Agency regarding APPROVING THE FOURTH AMENDMENT TO THE AGREEMENT WITH DLR GROUP, INC. (FORMERLY KNOWN AS WESTLAKE REED LESKOSKY) FOR CONSTRUCTION ADMINISTRATION SERVICES ON THE RENOVATION PROJECT FOR THE LOBBY, COMMON AREAS, AND RESTROOMS AT THE LYCEUM THEATRE IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA.

ITEM 3 Report and Resolution from the Successor Agency regarding APPROVING THE PROFESSIONAL SERVICES AGREEMENT WITH O’CONNOR CONSTRUCTION MANAGEMENT, INC. FOR COST ESTIMATION SERVICES ON THE RENOVATION PROJECT FOR THE PERFORMANCE STAGES AND DRESSING AREAS AT THE LYCEUM THEATRE IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA

ITEM 4 Informational Update regarding STATUS OF DISPOSITION OF AMENDED AND RESTATED LONG-RANGE PROPERTY MANAGEMENT PLAN SALE OF PROPERTY SITES

COMMUNICATIONS RECEIVED
ADJOURNMENT

THE NEXT SCHEDULED OVERSIGHT BOARD MEETING WILL BE HELD ON MONDAY, NOVEMBER 20, 2017 AT 3:00 P.M.

For more information please contact:
Michele O’Malia: 619-235-2200
Email: omalia@civicsd.com
OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY
REGULAR MEETING

MINUTES
FOR
REGULAR BOARD MEETING
OF
MONDAY, JUNE 19, 2017
AT 3:00 P.M.

CIVIC SAN DIEGO BOARD ROOM
401 B STREET, SUITE 400, SAN DIEGO, CA  92101

ADOPTION AGENDA, * CONSENT ITEMS

ITEM 1  Report and Resolution from the Successor Agency regarding SALE OF CERTAIN FORMER REDEVELOPMENT AGENCY PROPERTIES IN ACCORDANCE WITH THE APPROVED AMENDED AND RESTATED LONG-RANGE PROPERTY MANAGEMENT PLAN

CHRONOLOGY OF THE MEETING:
The meeting was called to order by Chair Nelson at 3:05 p.m. The meeting was adjourned by Chair Nelson at 3:26 p.m.

ATTENDANCE DURING THE MEETING:

ROLL CALL:
James Davies, City of San Diego appointee – present
Dr. Bonnie Ann Dowd, California Community Colleges appointee – present
Kaye Hobson, County of San Diego appointee – present
Mark Nelson, City of San Diego appointee – present

EXCUSED:
Andra Donovan, Esq., County Board of Education appointee – excused
Sandy Kerl, Special District Appointee – excused
Supervisor Ron Roberts, County of San Diego appointee – excused

CLERK OF THE BOARD:
Michele O’Malia

CHAIR, BOARD, OVERSIGHT BOARD CONTACT COMMENT
Civic San Diego President Reese A. Jarrett was unavailable to attend the meeting. Civic San Diego Chief Financial Officer/COO Andrew T. Phillips recused himself from participating in Item #1 due to a potential conflict arising from prior employment with Jones Lang LaSalle.
APPROVAL OF BOARD MINUTES
Approval of Board minutes from January 23, 2017.

BOARD ACTION
Motion by Director James Davies to approve the minutes January 23, 2017. Seconded by Director Kay Hobson. Passed by the following vote:
Yea: Chair Mark Nelson, Directors James Davies, Kay Hobson, and Dr. Bonnie Ann Dowd;
Nay: None; and
Abstained: None.

NON-AGENDA PUBLIC COMMENT
None.

ADOPTION AGENDA, CONSENT ITEMS

ITEM 1 Report and Resolution from the Successor Agency regarding SALE OF CERTAIN FORMER REDEVELOPMENT AGENCY PROPERTIES IN ACCORDANCE WITH THE APPROVED AMENDED AND RESTATATED LONG-RANGE PROPERTY MANAGEMENT PLAN

ITEM DESCRIPTION:
In accordance with dissolution law, the Successor Agency is required to dispose of all of its non-housing real property assets in accordance with an approved Long-Range Property Management Plan. On October 15, 2015, the State Department of Finance (DOF) issued a letter granting final approval for the Successor Agency’s Amended and Restated Long-Range Property Management Plan (ARPMP). The ARPMP included six sites within the Sale of Property category. This category requires that the Successor Agency sell these sites for fair market value. The Successor Agency, in accordance with a process approved by the Oversight Board, selected the firm of Jones, Lang, LaSalle (JLL), a real estate brokerage firm, to assist with the marketing and sale of the properties. The Oversight Board is requested to approve Purchase and Sale Agreements (PSA) addressing the sale of five of the six Sale of Property sites. Net sales proceeds from these transactions will be transmitted to the San Diego County Auditor-Controller (County Auditor) for distribution to the local taxing entities, also known as Affected Taxing Entities (ATEs).

STAFF RECOMMENDATION:
That the Oversight Board adopts the following Resolutions [OB-2017-04 through OB-2017-9]:

OB-2017-4 – A Resolution Of The Oversight Board For The City Of San Diego Redevelopment Successor Agency Approving The Purchase And Sale Agreement Related To The Successor Agency’s Sale Of The Real Property Commonly Known As North Park Renaissance Located At 4330 30th Street

OB-2017-5 – A Resolution Of The Oversight Board For The City Of San Diego Redevelopment Successor Agency Approving The Purchase And Sale Agreement Related To The Successor Agency’s Sale Of The Real Property Commonly Known As Alpha Street 43rd Located On The North Side Of Alpha Street, West Of 43rd Street
OB-2017-6 – A Resolution Of The Oversight Board For The City Of San Diego Redevelopment Successor Agency Approving The Purchase And Sale Agreement Related To The Successor Agency’s Sale Of The Real Property Commonly Known As Alpha Street Remnants West And East, Generally Located On The North Side Of Alpha Street, West Of 43rd Street.

OB-2017-7 – A Resolution Of The Oversight Board For The City Of San Diego Redevelopment Successor Agency Approving The Purchase And Sale Agreement Related To The Successor Agency’s Sale Of The Real Property Commonly Known As The 6th Avenue Access Driveway Located At 638 6th Avenue In Downtown San Diego.

OB-2017-8 – A Resolution Of The Oversight Board For The City Of San Diego Redevelopment Successor Agency Approving The Purchase And Sale Agreement Related To The Successor Agency’s Sale Of The Real Property Commonly Known As The Two America Plaza Air Rights Parcel, Located South Of B Street Between Kettner Boulevard And India Street In Downtown San Diego.

OB-2017-9 – A Resolution Of The Oversight Board For The City Of San Diego Redevelopment Successor Agency Approving The Purchase And Sale Agreement Related To The Successor Agency’s Sale Of The Real Property Commonly Known As The World Trade Center Parking Garage Site Located At 1245 Fifth Avenue In Downtown San Diego

BOARD DISCUSSION: The Board members engaged in discussion regarding disposition of the properties and due diligence. Member Dowd asked about a potential conflict with one of the recipients being the San Diego Community College District. She stated that other than her employment, she did not have a personal investment in the district, but wanted to make sure there would not be a problem with her voting on the matter. Oversight Board Counsel Steve Mattas advised that it was appropriate for Ms. Dowd to cast a vote on the matter.

BOARD ACTION:
Motion by Dr. Bonnie Ann Dowd to approve Resolutions:
OB-2017– 4
OB-2017– 5
OB-2017– 6
OB-2017– 7
OB-2017– 8
OB-2017– 9
Seconded by James Davies. Passed by the following vote:
Yea: Chair Mark Nelson, Directors James Davies, Kaye Hobson, and Dr. Bonnie Ann Dowd;
Nay: None; and
Abstained: None.

COMMUNICATIONS RECEIVED
None.

ADJOURNMENT
The meeting was adjourned at 3:26 p.m.
OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: October 13, 2017

SUBJECT: Report from the Successor Agency Establishing a Schedule for the Date and Time of Future Public Meetings for the first half of calendar year 2018 of the Oversight Board.

CONTACT/PHONE NUMBER: Reese A. Jarrett, Civic San Diego 619-235-2200

DESCRIPTIVE SUMMARY OF ITEM:
Adopt a Resolution establishing the schedule for the date and time of public meetings of the Oversight Board in 2018 as listed below. Consistent with past practice, it is anticipated that all of these meetings will be held in the Civic San Diego Board Room, 401 B Street, Suite 400, San Diego, California 92101.

January 22
February 26
March 19
April 16
May 21
June 18

Pursuant to Health and Safety Code section 34179 (j), beginning July 2018, only one oversight board will operate in each county with the exception of Los Angeles County. Thus, this Board will not convene after the June 18, 2018 meeting.

STAFF RECOMMENDATION:
Adopt Resolution.

BACKGROUND:
Government Code Section 54954(a), part of the Brown Act, requires that public bodies such as the Oversight Board shall provide for the time and place for holding regular meetings. This action will set a schedule for calendar year 2018 based upon the availability of the Board members and will notify the public of the meetings.

With the exception of January and February (due to holiday conflicts), the proposed schedule continues in effect the Oversight Board’s third Monday at 3:00 p.m. schedule.

Respectfully submitted,

Reese A. Jarrett
President
Civic San Diego
OVERSIGHT BOARD RESOLUTION NUMBER OB-2017-10

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE
CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR
AGENCY ESTABLISHING A SCHEDULE FOR FUTURE
PUBLIC MEETINGS OF THE OVERSIGHT BOARD

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the former RDA (Successor Agency), assumed the former RDA’s assets and obligations; and

WHEREAS, the Successor Agency is winding down the former RDA’s affairs in accordance with AB 26, enacted on June 28, 2011, Assembly Bill 1484 (AB 1484), enacted on June 27, 2012, and subsequent legislation (collectively, the Dissolution Laws); and

WHEREAS, pursuant to California Health and Safety Code section 34179, an Oversight Board composed of seven members has been formed to oversee certain actions and decisions of the Successor Agency in accordance with the Dissolution Laws; and

WHEREAS, in accordance with the Brown Act, California Government Code section 54954(a), which requires that public bodies such as the Oversight Board shall provide for the time and place for holding regular meetings, it is the desire of the Oversight Board to establish a schedule for its future meetings; and

WHEREAS, California Health and Safety Code section 34179(j) provides that only one oversight board will operate in each county (except for Los Angeles County) beginning July 2018, which means the Oversight Board will not hold any meetings after June 2018.
NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Board adopts the following schedule for its regular meetings for the first half of calendar year 2018 to be held in the Civic San Diego Board Room, 401 B Street, Suite 400, San Diego, California 92101.

Monday, January 22, at 3:00 p.m.
Monday, February 26, at 3:00 p.m.
Monday, March 19, at 3:00 p.m.
Monday, April 16, at 3:00 p.m.
Monday, May 21, at 3:00 p.m.
Monday, June 18, at 3:00 p.m.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on October 16, 2017.

Mark Nelson
Chair, Oversight Board
ITEM 2

OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: October 13, 2017

SUBJECT: Adoption of a Resolution Approving the Fourth Amendment to the Agreement with DLR Group/Westlake Reed Leskosky for As-Built Preparation and Post Construction Services

CONTACT/PHONE NUMBER: Robert Sutherlin Jr., 619-533-7107

STAFF RECOMMENDATION: That the Oversight Board approves the Fourth Amendment to the Agreement with DLR Group/Westlake Reed Leskosky for As-Built Preparation and Post Construction Services for the Lyceum Theatre Renovation Project; and makes certain findings to the effect that the Amendment is in the best interests of the local taxing entities and that the provision of services under the Amendment is necessary for the administration or operation of the Successor Agency.

DESCRIPTIVE SUMMARY OF ITEM: Under this Fourth Amendment ("Amendment") between Civic San Diego ("CivicSD"), acting as the Successor Agency's contracting agent, and DLR Group/Westlake Reed Leskosky ("Consultant"), the Consultant will provide As-Built Preparation and Post Construction Services for the lobby, common areas, and restrooms for the Lyceum Theatre Renovation Project ("Project"). The Project involves the Successor Agency's renovation of the Lyceum Theatre public spaces in downtown San Diego. This Amendment will cover the costs of As-Built Preparation and Post Construction Services to prepare As-Built drawings for the Project. These services are necessary to allow the Successor Agency to fulfill its contractual obligations under a 1986 sublease agreement, which qualifies as an enforceable obligation. Under the Successor Agency's approved Long-Range Property Management Plan, the Lyceum Theatre is identified as a "Fulfill Enforceable Obligation" site. As a result, the Successor Agency will continue to own the long-term leasehold interest in the Lyceum Theatre through a lease term expiring in mid-2035 and is required during the lease term to fulfill its contractual obligations under the 1986 sublease agreement.

BACKGROUND: The purpose of this staff report is to explain the need for execution of the Amendment (Attachment A), as the basis for the expenditure of Successor Agency funds for substantiated work performed by the Consultant in accordance with the Amendment. As described below, these actions will enable the Successor Agency to fulfill an underlying enforceable obligation and thereby fulfill its statutory responsibilities, notwithstanding certain statutory prohibitions that generally prevent the execution of new agreements or amendments thereto as of June 28, 2011.

Pursuant to Assembly Bill x1 26 ("AB 26") and Assembly Bill 1484, the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("Former RDA") dissolved on February 1, 2012, at which time the Successor Agency assumed all of the Former
RDA's assets, rights, and obligations under the California Community Redevelopment Law. In addition, CivicSD, formerly Centre City Development Corporation (CCDC), has replaced CCDC as the Successor Agency's representative for, among other duties, many aspects of the winding down of redevelopment in the City of San Diego.

Section 34177.3(a) of California Health and Safety Code, as recently amended, states that successor agencies "shall lack the authority to, and shall not, create new enforceable obligations or begin redevelopment work, except in compliance with an enforceable obligation... that existed prior to June 28, 2011." Section 34177.3(b) permits successor agencies to "create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance." Section 34171(d)(1)(E) defines "enforceable obligation" to include, "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." Section 34171(d)(1)(F) further defines "enforceable obligation" to include "contracts or agreements for the administration or operation of the successor agency, in accordance with this part..." Section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

Under Section 34177.3(b), a post-AB 26 contract or amendment thereto is warranted if it allows the Successor Agency to fulfill a pre-AB 26 enforceable obligation. The Department of Finance (DOF) issued a letter dated November 8, 2013 (Attachment B), that requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency's expenditure of funds in the Recognized Obligation Payment Schedule (ROPS 13-14B time period and beyond). The DOF also issued a letter dated April 1, 2014 (Attachment C), interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with HSC section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F).

**DISCUSSION:** This Amendment should be permitted under Sections 34171(d)(1)(E), 34171(d)(1)(F), 34177(a), 34177(c), and 34177.3(b), as it will allow Successor Agency, through CivicSD, to utilize the Consultant to comply with an enforceable obligation that existed prior to June 28, 2011. The enforceable obligation was created through: (i) a Lease Agreement between the Former RDA and the owner of the Lyceum, Horton Plaza Associates, executed in 1985; and (ii) a Master Sublease Agreement ("Sublease Agreement") between the Former RDA and the Horton Plaza Theatres Foundation (HPTF), executed in 1986. Among other things, the Sublease Agreement requires HPTF to operate and manage the Lyceum Theatre. Section XIII of the Sublease Agreement obligates the Successor Agency to replace fixtures and equipment at the Lyceum Theatre that were originally installed by the Former RDA and are in need of replacement from time-to-time due to ordinary wear and tear or obsolescence. To fulfill this pre-AB 26 enforceable obligation, CivicSD, on the Successor Agency's behalf, retained the
Consultant under the original agreement dated July 23, 2008, to provide engineering design services for the Project.

The Consultant’s costs under the original agreement are included in prior approved ROPS, line item 299. The Oversight Board and the DOF approved the original agreement with the Consultant in an amount of $128,390 to complete the necessary work. The First, Second, and Third amendments provide for additional compensation of $341,675 and increased the contract amount to $470,065 to allow the Consultant to update plans to current codes that were a result of dissolution. This proposed increase in compensation of $21,400, from $470,065 to $491,465 is needed for As-Built Drawing Preparation and Post Construction Support to provide a permanent record of the facility and complete this portion of the Project. The Consultant’s costs under the proposed Amendment can be paid as part of the currently approved line item 299 in ROPS 11(17-18) Period “A,” covering the period of July 1, 2017 through December 30, 2017, or ROPS 11(17-18) Period “B,” covering the period of January 1, 2018 through June 30, 2018. Payments to the Consultant beyond the ROPS 11 period will be predicated upon the approval of additional expenditures under line item 299 in future approved ROPS.

CONCLUSION: Based on the foregoing, the Successor Agency respectfully requests that the Oversight Board approves the Amendment and the related findings, as further described in the accompanying Resolution.

Respectfully submitted,

Robert C. Satherlin, Jr.
Civil Engineer, Civic San Diego

Concurred by:

Reese A. Jarrett
President, Civic San Diego

Attachments: A – Fourth Amendment to the Agreement by and between Civic San Diego and DLR Group/Westlake Reed Leskosky
B – Oversight Board Action Letter dated November 8, 2013
C – Oversight Board Action Letter dated April 1, 2014

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FOURTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN CIVIC SAN DIEGO AND DLR GROUP | WESTLAKE REED LESKOSKY

This Fourth Amendment (“Amendment”), dated this ___ day of __________, 2017, for reference purposes only, is entered into by and between Civic San Diego, a California non-profit public benefit corporation, with its principal place of business at 401 B Street, Suite 400, San Diego, California 92101 (“CivicSD”) and DLR Group, Inc. d/b/a DLR Group | Westlake Reed Leskosky (WRL), an architectural and engineering firm with its relevant place of business at 6225 N. 24th Street, Suite 250, Phoenix, AZ 85016 (“Consultant”). CivicSD and Consultant are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.” This Fourth Amendment is entered into in light of the following recited facts (each a “Recital”).

RECITALS

A. CivicSD is a non-profit public benefit corporation created by the City of San Diego (“City”) to engage in economic development, land use permitting and services, and project management services, which, under California law, can be done by contract with or delegated by the City, or the Successor Agency to the Redevelopment Agency of the City of San Diego (also known as the “Agency,” the “Successor Agency” or the “City of San Diego Solely in its Capacity as the Designated Successor Agency to the Redevelopment Agency of the City of San Diego, a Former Public Body, Corporate and Politic”).

B. CivicSD is authorized to enter into contracts pursuant to the California Nonprofit Public Benefit Corporation Law (Corp. Code § 5110 et seq.), its Articles of Incorporation and its Bylaws.

C. CivicSD is also authorized to enter into contracts for and on behalf of the City and Successor Agency pursuant to its Operating Agreement, Agency Agreement, or other Agreements with the City.

D. CivicSD, under the Professional Services Agreement dated January 20, 2009 (“Agreement”), has retained the services of Consultant, to provide professional services relating to the renovation of the Lyceum Theatre in San Diego, CA (the “Project”). Whereas this agreement was originally between Centre City Development Corporation and Westlake Reed Leskosky. Whereas this agreement has now been assigned to DLR Group, Inc. d/b/a DLR Group | Westlake Reed Leskosky from Westlake Reed Leskosky.

E. CivicSD and the Consultant desire to amend the aforesaid Agreement to (a) modify the scope of services and (b) increase maximum compensation. CivicSD enters into this Agreement on behalf of the Successor Agency and in its role as consultant to the Successor Agency. All payments to be made to Consultant under this Agreement shall be derived from funds made available by the Successor Agency and are predicated upon the California Department of Finance’s approval of expenditures for the Project on the appropriate Recognized Obligation Payment Schedule(s) (“ROPS”).
F. **Amendment Authority.** This Fourth Amendment is authorized pursuant to Section 8.10 of the Agreement.

NOW, THEREFORE, in consideration of the Recitals and the terms and conditions set forth in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties set forth their mutual covenants and understandings as follows:

**TERMS**

1. **SCOPE OF SERVICES:** Agreement Exhibit A – Scope of Services is hereby supplemented by the Scope of Services (AMENDED), attached to this Amendment as Fourth Amendment Exhibit “A” and incorporated into this Amendment by this reference.

2. **COMPENSATION:** Agreement Article III, Section 3.1 – General is hereby amended to increase the total compensation by $21,400 from $470,065 to $491,465. Section 3.1 shall therefore read, in its entirety, as follows:

   3.1 **GENERAL**

   The total compensation for all services performed pursuant to this Agreement shall not exceed the sum of Four Hundred Ninety-One Thousand Four Hundred Sixty-Five Dollars ($491,465). All payments to be made to Consultant under this Agreement shall be derived from funds made available by the Successor Agency. Furthermore, the funds will be available for this Project only if the California Department of Finance (“DOF”) approves sufficient expenditures, if any, on the appropriate Recognized Obligation Payment Schedule (“ROPS”). Consultant shall therefore not undertake any work, and shall not be entitled to receive any payment for work until and unless Consultant has received written notification from CivicSD that the DOF has approved such expenditure on the ROPS that covers the period(s) during which such work will be performed. Payments to the Consultant for all services shall be made in accordance with the payment schedule set forth in Exhibit C and shall not exceed the amount listed above without prior written approval from CivicSD. Consultant acknowledges that CivicSD is under no obligation to compensate the Consultant for services rendered or expenses accrued under this Agreement in excess of the total compensation specified above. It shall be the responsibility of the Consultant to monitor its activities to ensure that the Scope of Services specified in Agreement Exhibit A can be completed and no charges accrued in excess of the agreed total compensation without prior written approval during the term of this Agreement.

3. **CONTINUING EFFECT OF AGREEMENT.** Except as amended by this Fourth Amendment, all other provisions of Agreement remain in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Third Amendment.
[SIGNATURES ARE ON THE FOLLOWING PAGE.]
IN WITNESS WHEREOF, the Parties have caused this Fourth Amendment to Agreement to be executed and delivered by their respective representatives, thereunto duly authorized, as of the date first written above.

CIVIC SAN DIEGO on behalf of and in its role as consultant to the Successor Agency to the Redevelopment Agency of the City of San Diego

By: ________________________________
    Reese A. Jarrett
    President

Dated this ________ day of ____________ 2017

WESTLAKE REED LESKOSKY

By: ________________________________

Print Name: __________________________

Its: _________________________________

Dated this ________ day of ____________ 2017

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CIVIC SAN DIEGO CORPORATE COUNSEL

By (Signature): __________________________
    Shawn Hagerty, Esq.
    Corporate Counsel

Dated this ___ day of ____________ 2017
THIRD AMENDMENT EXHIBIT A
SCOPE OF SERVICES (AMENDED)

Agreement Scope of Services is hereby amended to include the following additional services:

When and as directed by Civic San Diego, Consultant shall perform services to include, but not limited to, the following:

1.0 Update drawing package to illustrate de-scoped work
   • Cloud, tag and identify areas eliminated from the project scope, as directed during construction.
   • Delivery of signed and sealed drawings representing conditions observed in the field for resubmittal to the City of San Diego.
   • Resubmittal to be delivered to Harris & Associates.

2.0 Preparing record drawings
   • Assumes a complete as-built drawing package to be delivered by the contractor, including but not limited to all referenced Requests for Information (RFIs) incorporated, Architects Supplemental Instructions (ASIs), and uncovered field conditions.
   • All field and owner directed deviations from the contract documents.
   • Record drawings to be delivered in electronic PDF format, to the owner and construction manager (Harris & Associates)
   • Coordination or Post-Construction Closeout Activities

3.0 Post-Construction Construction Closeout
   • Consultant to engage Harris & Associates for construction management post-construction closeout.
   • Consultant to verify punch-list items completed.
   • Coordination of record drawing documentation
   • Facilitating plan changes and inspections
• Retention and change order review. Harris & Associates to assist CivicSD with release of retention.

• Warranty services (1 year) Special Contracts Amendments
  - Consultant excludes the ten (10) year extended reporting period for Professional Liability coverage
  - Architect and Consultant’s scope of services defined herein shall not constitute an undertaking that would relieve the Contractor or its close-out responsibilities to the owner. Architect and Consultant assume no liability for any failure by the Contractor in completing its punch-list, as-built drawings, or warranty obligation to Owner.

• Consultant shall assist CivicSD in completing closeout process with the City of San Diego.

4.0 Schedule

• Consultant shall provide record drawings within three (3) weeks of receipt of documentation from the contractor. Post-construction services to be coordinated with the owner and contractor – a completion date has not been established.
November 8, 2013

Mr. William Fulton, Director, Planning and Neighborhood Restoration Department
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101-4154

Dear Mr. Fulton:

Subject: Oversight Board Action

The City of San Diego Successor Agency (Agency) notified the California Department of Finance (Finance) of its September 24, 2013 Oversight Board (OB) Resolution on September 30, 2013. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, the Agency’s OB Resolution OB-2013-12 related to approving the Fifth ROPS 13-14B, the six-month administrative budget of the successor agency, and certain associated actions, is partially approved. In our email to you dated October 18, 2013, Finance indicated that the review of the ROPS 13-14B would have a separate determination letter. Specifically, this determination letter is in connection with the “certain associated actions” that the Agency authorized within this oversight board action.

The partial approval of this action is associated with the following findings:

- All contracts and agreements between the City of San Diego (City) and the former redevelopment agency that are included in ROPS 13-14B were made for legitimate redevelopment purposes and will be of benefit to the taxing entity.

- The Agency is authorized to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS 13-14B, consistent with HSC sections 24171 (d)(1)(F) and 34177.3(b).

- The Agency is authorized to enter into contracts, and amendments thereto, for the expenditure of non-housing bond proceeds that are budgeted in the approved ROPS 13-14B, as permitted by HSC section 34191.4 (c), upon the Successor Agency’s receipt of a Finding of Completion pursuant to HSC section 34179.7.

Finance approves the portion of the oversight board action that finds all contracts and agreements between the City and the Former RDA that are included in ROPS 13-14B were made for legitimate redevelopment purposes and will be of benefit to the taxing entity.
HSC section 34177 (l) (2) (A) states that a recognized obligation payment schedule is prepared by the successor agency for the enforceable obligations of the former redevelopment agency. However, as defined within HSC section 34171 (d) (1), enforceable obligation applies to legally binding and enforceable agreements or contracts, and does not allow for contractual agreements that have not yet been entered into.

Although HSC section 34177 (a) requires the Agency to continue to make payment due for enforceable obligations, and HSC section 34177.3 (b) authorizes the Agency to create new enforceable obligations, the contracts associated with those new obligations must be submitted to Finance for approval. The mere existence of an Agency obligation does not in itself deem it to be enforceable; it is within Finance's authority to determine the enforceability of an obligation. The above items lack the specificity required by Finance for approval.

As there are currently no legally binding and enforceable agreements in place but, rather, the unknown, currently non-existent contracts, Finance denies the portions of this resolution that authorize the Agency to enter into services and/or management contracts, as well as contracts for expenditure of non-housing bond proceeds upon receipt of the Finding of Completion. Finance will continue to require the Agency to abide by HSC section 34179 (e), which states that all actions taken by the oversight board shall be adopted by resolution which must be submitted to Finance for review.

In the event the OB desires to amend the portion of the resolution not approved by Finance, Finance is returning it to the board for reconsideration. However, the Agency can move forward with the portion of the resolution approved by Finance.

Please direct inquiries to Wendy Griffe, Supervisor, or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Assistant Program Budget Manager

Cc: Mr. Jeff Graham, President, Civic San Diego
Mr. Juan Perez, Senior Auditor and Controller Manager, County of San Diego
California State Controller's Office
April 1, 2014

Mr. William Fulton, Director, Planning and Neighborhood Restoration Department
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101-4154

Dear Mr. Fulton:

Subject: Oversight Board Action Determinations

The City of San Diego Successor Agency (Agency) notified the California Department of Finance (Finance) of its February 11, 2014 Oversight Board (OB) Resolutions on the dates noted below. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of your OB actions.

Based on our review and application of the law, the Agency's OB Resolutions are approved or denied, as noted below.

<table>
<thead>
<tr>
<th>OB No.</th>
<th>Date Submitted</th>
<th>Action</th>
<th>Approved/Denied</th>
</tr>
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<tbody>
<tr>
<td>OB-2014-5</td>
<td>2/18/2014</td>
<td>Third Amendment to Agreement with Community Building Services</td>
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<td>OB-2014-6</td>
<td>2/18/2014</td>
<td>Fourth Amendment to Agreement with Community Building Services</td>
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<td>Third Amendment to Agreement with Gonzales-White Consulting</td>
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<td>OB-2014-31</td>
<td>2/18/2014</td>
<td>Agreement with Project Professionals</td>
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</table>

For those resolutions Finance is approving in which the vendors are contracted to provide services for more than one project and/or location, be advised that expenditures are authorized only when rendered in connection with enforceable obligations. In addition, any services provided wherein the underlying obligation does not meet the definition of an enforceable obligation pursuant to Health and Safety Code section 34171 (d) (1) will not be authorized and will not be eligible for funding. The costs of services are subject to Finance’s review and approval on a subsequent Recognized Obligation Payment Schedule before they can be considered enforceable.

For those resolutions that are not approved, HSC section 34171 (d) (1) (F) states that agreements necessary for the administration or operation of the Agency, such as the cost of maintaining assets prior to disposition, are enforceable obligations. However, HSC section 34181 (e) authorizes an OB to approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities. These amendments, which increase the compensation and/or scope, do not include language substantiating the changes made. Thus, it is not clear whether the amendments are in the best interests of the taxing entities or that the increases in compensation and/or scope are necessary for the administration or operation of the Agency.

This is our determination with respect to the OB actions taken. As authorized by HSC section 34179 (h), Finance is returning these denied OB actions to the board for reconsideration.

Please direct inquiries to Wendy Griffe, Supervisor, or Jenny DeAngelis, Lead Analyst at (916) 445-1546.
Mr. William Fulton
April 1, 2014
Page 3

Sincerely,

[Signature]

JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Andrew Phillips, CFO, COO & Interim President of Civic San Diego
    Mr. Jon Baker, Senior Auditor and Controller Manager, County of San Diego
    California State Controller’s Office
OVERSIGHT BOARD RESOLUTION NUMBER OB-2017-11

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE FOURTH AMENDMENT TO THE AGREEMENT WITH DLR GROUP, INC. (FORMERLY KNOWN AS WESTLAKE REED LESKOSKY) FOR CONSTRUCTION ADMINISTRATION SERVICES ON THE RENOVATION PROJECT FOR THE LOBBY, COMMON AREAS, AND RESTROOMS AT THE LYCEUM THEATRE IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26) enacted on June 28, 2011, the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA’s assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA’s operations and to ensure compliance with the Former RDA’s obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency, including the Successor Agency’s approval of each Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, among other things, each ROPS shows the estimated payments owed by the Successor Agency to third parties for enforceable obligations during the upcoming fiscal period and identifies the funding sources that will be used to make such payments; and
WHEREAS, California Health and Safety Code (Code) section 34177.3(a) states that successor agencies “shall lack the authority to, and shall not, create new enforceable obligations or begin redevelopment work, except in compliance with an enforceable obligation . . . that existed prior to June 28, 2011”; and

WHEREAS, Code section 34177.3(b) permits successor agencies to “create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance”; and

WHEREAS, Code section 34171(d)(1)(E) defines “enforceable obligation” to include “any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy”; and

WHEREAS, Code section 34171(d)(1)(F)(i) further defines “enforceable obligation” to include “[c]ontracts or agreements for the administration or operation of the successor agency, in accordance with this part . . . .”; and

WHEREAS, Code section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Code section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, the DOF issued a letter dated November 8, 2013 (November 2013 Letter) that effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, the DOF also issued a letter dated April 1, 2014 (April 2014 Letter), interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26
contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with Code section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with Code section 34171(d)(1)(F)(i); and

WHEREAS, to comply with the November 2013 Letter and the April 2014 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, the Fourth Amendment to the Professional Services Agreement (Amendment) with DLR Group, Inc., dba DLR Group | Westlake Reed Leskosky (Consultant), formerly known as Westlake Reed Leskosky, which involves the expenditure of ROPS-approved funds for construction administration services necessary for the completion of a project at the Lyceum Theatre to renovate the lobby, common area, and restrooms (Project) pursuant to the 1986 Master Sublease Agreement (Sublease Agreement) between the Former RDA and the Horton Plaza Theatres Foundation (HPTF); and

WHEREAS, among other things, the Sublease Agreement requires HPTF to operate and manage the Lyceum Theatre, and requires the Successor Agency to replace fixtures and equipment at the Lyceum Theatre that were originally installed by the Former RDA and are in need of replacement from time to time due to ordinary wear and tear or obsolescence; and

WHEREAS, under the Successor Agency’s approved Long-Range Property Management Plan, the Lyceum Theatre is identified as a “Fulfill Enforceable Obligation” site, and as a result, the Successor Agency will continue to own the long-term leasehold interest in the Lyceum Theatre through a lease term expiring in mid-2035 and is required during the lease term to fulfill its contractual obligations under the Sublease Agreement; and

WHEREAS, a copy of the Amendment is attached to the staff report accompanying this Resolution; and
WHEREAS, the Amendment will benefit the local taxing entities and will be in their best interests, in that it will permit the Successor Agency to carry out its contractual obligation under the Sublease Agreement, a pre-AB 26 contract, to complete the replacement of fixtures and equipment at the Lyceum Theatre, will enable the Successor Agency to preserve an adequate engineering record of the completed Project, and will avoid the Successor Agency’s breach of its contractual obligation; and

WHEREAS, the Amendment involves an increase in the scope of services to encompass the Consultant’s preparation of as-built drawings for the Project and the Consultant’s completion of post-construction closeout of the Project; and

WHEREAS, the increased scope of services is warranted in that (a) the as-built drawings are needed to reflect the final, installed components of the Project and to allow successful future operation of those components and (b) the Consultant’s completion of post-construction closeout of the Project will ensure that all final “punch-list” items for the Project are addressed satisfactorily and that applicable warranties for the renovation work will remain intact; and

WHEREAS, the Amendment also involves an increase in compensation by $21,400, from the previous amount of $470,065 to the current amount of $491,465, to allow the Consultant to prepare the as-built drawings for the Project and complete the post-construction closeout; and

WHEREAS, the increased compensation is warranted in that it is directly attributable to the increased scope of services; and

WHEREAS, the Amendment is necessary for the operation or administration of the Successor Agency because it permits the Successor Agency to complete the proper engineering close-out of the Project and to thereby fulfill its contractual obligation under the Sublease Agreement to complete the replacement of fixtures and equipment at the Lyceum Theatre; and
WHEREAS, the Successor Agency, or Civic San Diego as the contracting agent on its behalf, will pay for the services performed under the Amendment utilizing the funding sources shown in line item 299 of the ROPS.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Board finds, in accordance with Code section 34181(e), that the Amendment is in the best interests of the local taxing entities.

2. The Board finds, in accordance with Code section 34171(d)(1)(F)(i), that the provision of services under the Amendment, including the increase in scope of services to include preparation of as-built drawings for the Project and completion of post-construction closeout of the Project, as well as the related increase in compensation by $21,400, is necessary for the administration or operation of the Successor Agency.

3. The Amendment is approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on October 16, 2017.

_________________________________
Chair, Oversight Board
ITEM 3

OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: October 13, 2017

SUBJECT: Adoption of a Resolution Approving an Agreement with O’Connor Construction Management, Inc., for Cost Estimation Services for the Lyceum Theatre Renovation

CONTACT/PHONE NUMBER: Robert Sutherlin Jr., 619-533-7107

STAFF RECOMMENDATION: That the Oversight Board approves the Agreement with O’Connor Construction Management, Inc. for Cost Estimation Services for the Lyceum Theatre Renovation Project in the amount of Eighteen Thousand, Nine Hundred Ten dollars ($18,910); and makes certain findings to the effect that this Agreement is in the best interests of the local taxing entities and that the provision of services under the Agreement are necessary for the administration or operation of the Successor Agency.

DESCRIPTIVE SUMMARY OF ITEM: Under this Agreement between Civic San Diego ("CivicSD"), acting as the Successor Agency’s contracting agent, and O’Connor Construction Management, Inc. ("Consultant"), the Consultant will provide Cost Estimation Services to Renovate the Lyceum Theatre ("Project") within the theatre’s performance stages and dressing areas. The Project involves the Successor Agency’s renovation of the Lyceum Theatre in downtown San Diego. This Agreement will cover the costs to prepare an estimate of the necessary repairs and improvements within the two stage performance areas of the theatre and the dressing rooms. These services are necessary to allow the Successor Agency to fulfill its contractual obligations under a 1986 sublease agreement, which qualifies as an enforceable obligation.

Under the Successor Agency’s approved Long-Range Property Management Plan, the Lyceum Theatre is identified as a “Fulfill Enforceable Obligation” site. As a result, the Successor Agency will continue to own the long-term leasehold interest in the Lyceum Theatre through a lease term expiring in mid-2035 and is required during the lease term to fulfill its contractual obligations under the 1986 sublease agreement. The items currently identified and shown on the List of Design Elements on sheets 17 and 18 of Attachment A are due to safety concerns, current ADA requirements, or due obsolescence and the inability to affect repairs. This list is the result of a letter from the Horton Plaza Theatres Foundation (Attachment B) demanding repairs to various items that are required through the 1986 sublease agreement.

BACKGROUND: The purpose of this staff report is to explain the need for execution of the Agreement (Attachment A), as the basis for the expenditure of Successor Agency funds for substantiated work performed by the Consultant, in accordance with the Agreement. As discussed below, these actions will enable the Successor Agency to fulfill an underlying enforceable obligation and thereby fulfill its statutory responsibilities, notwithstanding certain
statutory prohibitions that generally prevent the execution of new agreements or amendments thereto as of June 28, 2011.

Pursuant to Assembly Bill x1 26 (“AB 26”) and Assembly Bill 1484, the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic (“Former RDA”) dissolved on February 1, 2012, at which time the Successor Agency assumed all of the Former RDA’s assets, rights, and obligations under the California Community Redevelopment Law. In addition, CivicSD, formerly Centre City Development Corporation (CCDC), has replaced CCDC as the Successor Agency’s representative for, among other duties, many aspects of the winding down of redevelopment in the City of San Diego.

Section 34177.3(a) of California Health and Safety Code, as recently amended states that successor agencies “shall lack the authority to, and shall not, create new enforceable obligations or begin redevelopment work, except in compliance with an enforceable obligation . . . that existed prior to June 28, 2011.” Section 34177.3(b) permits successor agencies to “create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.” Section 34171(d)(1)(E) defines “enforceable obligation” to include “any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.” Section 34171(d)(1)(F) further defines “enforceable obligation” to include “contracts or agreements for the administration or operation of the successor agency, in accordance with this part . . . .” Section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

Under Section 34177.3(b), a post-AB 26 contract or amendment thereto is warranted if it allows the Successor Agency to fulfill a pre-AB 26 enforceable obligation. The Department of Finance (DOF) issued a letter dated November 8, 2013 (Attachment C) that requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond. The DOF also issued a letter dated April 1, 2014 (Attachment D), interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with HSC section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F).

**DISCUSSION:** This Agreement should be permitted under Sections 34171(d)(1)(E), 34171(d)(1)(F), 34177(a), 34177(c), and 34177.3(b) as it will allow Successor Agency, through CivicSD, to utilize the Consultant to comply with an enforceable obligation that existed prior to June 28, 2011. The enforceable obligation was created through: (i) a Lease Agreement between the Former RDA and the owner of the Lyceum, Horton Plaza Associates, executed in 1985; and (ii) a Master Sublease Agreement (“Sublease Agreement”) between the Former RDA and the Horton Plaza Theatres Foundation (HPTF), executed in 1986. Among other things, the Sublease
Oversight Board  
Meeting of October 16, 2017  
Page 3

Agreement requires HPTF to operate and manage the Lyceum Theatre. Section XIII of the Sublease Agreement obligates the Successor Agency to replace fixtures and equipment at the Lyceum Theatre that were originally installed by the Former RDA and are in need of replacement from time to time due to ordinary wear and tear or obsolescence. To fulfill this pre-AB 26 enforceable obligation, CivicSD, on the Successor Agency’s behalf, will retain the Consultant under this agreement to provide cost estimates for continued replacement, restoration, and repair to the Lyceum Theatre in the performance stages and backstage areas in compliance with the Sublease Agreement.

The Consultant’s costs for this agreement are included in approved ROPS 11, line item 205. The Consultant’s costs for this agreement can be paid as part of the currently approved line item 205 in ROPS 11(17-18) Period “A,” covering the period of July 1, 2017 through December 30, 2017, or ROPS 11(17-18) Period “B,” covering the period of January 1, 2018 through June 30, 2018. Payments to the Consultant beyond the ROPS 11 period will be predicated upon the approval of additional expenditures under line item 205 in future approved ROPS.

CONCLUSION: Based on the foregoing, the Successor Agency respectfully requests that the Oversight Board approves an Agreement with O’Connor Construction Management, Inc., in the amount of $18,910, and the related findings, as further described in the accompanying Resolution.

Respectfully submitted,  

[Signature]
Robert C. Sutherlin, Jr.  
Civil Engineer, Civic San Diego

Concurred by:

[Signature]
Reese A. Jarrett  
President, Civic San Diego

Attachments:  
A – Agreement with O’Connor Construction Management, Inc. for Cost Estimation Services  
B – Horton Plaza Foundation Letter  
C – Oversight Board Action Letter Dated November 8, 2013  
D – Oversight Board Action Letter Dated April 1, 2014
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") dated this ___ day of __________, 20___, for reference purposes only, is entered into by and between Civic San Diego, a California non-profit public benefit corporation, with its principal place of business at 401 B Street, Suite 400, San Diego, California 92101 ("CivicSD"), and O’Connor Construction Management, Inc. ("Consultant"), a California corporation, with its principal place of business at 8851 Research Drive, Irvine, CA 92618. CivicSD and Consultant are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.” This Agreement is entered into in light of the following recited facts (each, a “Recital”).

RECITALS

A. CivicSD is a non-profit public benefit corporation created by the City of San Diego ("City") to engage in economic development, land use permitting and services, and project management services, which, under California law, can be done by contract with or delegated by the City, or the Successor Agency to the Redevelopment Agency of the City of San Diego (also known as the “Agency,” the “Successor Agency” or the “City of San Diego Solely in its Capacity as the Designated Successor Agency to the Redevelopment Agency of the City of San Diego, a Former Public Body, Corporate and Politic”).

B. CivicSD is authorized to enter into contracts pursuant to the California Nonprofit Public Benefit Corporation Law (Corp. Code § 5110 et seq.), its Articles of Incorporation and its Bylaws.

C. CivicSD is also authorized to enter into contracts for and on behalf of the City and Successor Agency pursuant to its Operating Agreement, Agency Agreement, or other Agreements with the City.

D. CivicSD desires to retain the services of a cost estimation services firm to provide professional services relating to Lyceum Theatre renovation cost estimation services (the “Project”).

E. The professional services required by CivicSD for the Project are detailed within the Scope of Services set forth in Exhibit A to this Agreement (the “Professional Services”).

F. Consultant has represented to CivicSD that it has the expertise, experience, personnel, and the professional licenses, if professional licenses are required for the Professional Services, necessary to provide the Professional Services to CivicSD for the Project.

G. In light of these Recitals, CivicSD and Consultant desire to enter into this Agreement in which CivicSD will retain Consultant to provide, and Consultant shall provide, the Professional Services for the Project. CivicSD enters into this Agreement on behalf of the
Successor Agency and in its role as consultant to the Successor Agency. All payments to be made to Consultant under this Agreement shall be derived from funds made available by the Successor Agency and are predicated upon the California Department of Finance’s approval of expenditures for the Project on the appropriate Recognized Obligation Payment Schedule(s) (“ROPS”).

NOW, THEREFORE, in consideration of the Recitals and the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties set forth their mutual covenants and understandings as follows:

1. **SCOPE OF SERVICES:**

   a. **Scope of Services.** Consultant shall perform the Professional Services set forth in the Scope of Services, attached to this Agreement as Exhibit A and incorporated into this Agreement by this reference. Consultant shall not be compensated for any services rendered that are outside the scope of services without a written amendment to this Agreement. The Scope of Services may only be changed, modified, or altered through an amendment to this Agreement. Any approved changes, modifications or alterations to the Scope of Services shall be performed in accordance with the provisions of this Agreement, subject to applicable amendments.

2. **COMPENSATION:**

   a. **Payment for Professional Services.** CivicSD shall pay for the Professional Services in accordance with the payment and fee schedule contained in Exhibit B attached to this Agreement and incorporated into this Agreement by this reference (the “Time and Materials Fee Schedule”). The maximum payment under this Agreement for the Professional Services and, if authorized, reimbursement of expenses, shall not exceed Eighteen Thousand Nine Hundred Ten Dollars ($18,910) (the “Time and Materials Not to Exceed Amount”). Consultant acknowledges that all payments to be made to Consultant under this Amendment shall be derived from funds made available by the Successor Agency. Furthermore, the funds will be available for this Project only if the California Department of Finance (“DOF”) approves sufficient expenditures, if any, on the appropriate Recognized Obligation Payment Schedule (“ROPS”). Consultant shall therefore not undertake any work, and shall not be entitled to receive any payment for work until and unless Consultant has received written notification from CivicSD that the DOF has approved such expenditure on the ROPS that covers the period(s) during which such work will be performed. Amounts designated for payment for specific tasks or Work Product in the Time and Materials Fee Schedule may be reallocated to another task or Work Product identified in the Time and Materials Fee Schedule with the advance written approval of CivicSD; however, in no case shall any such reallocation result in an increase in the Time and Materials Not to Exceed Amount without written amendment of this Agreement.

   b. **Reimbursement of Expenses.** Consultant shall be reimbursed for actual, reasonable and necessary expenses incurred in the performance of Professional Services in accordance with the expense reimbursement schedule and limitations included in Exhibit C attached to this Agreement and incorporated into this Agreement by this reference (the “Time and Materials Reimbursement Schedule”). Payment for reimbursable expenses incurred by the
Consultant and its Subconsultant(s) is included in the Time and Materials Not to Exceed Amount. Consultant shall not mark-up reimbursable expenses, including expenses incurred by any Subconsultant. Unless this Agreement is amended, CivicSD shall not be responsible for reimbursement of expenses exceeding the applicable limitations set forth in the Time and Material Reimbursement Schedule. Consultant shall use its best efforts to schedule reimbursable expenses such as travel and lodging in advance in order to reduce costs, and CivicSD reserves the right to reject or reduce expenses resulting from Consultant’s failure to use such best efforts.

c. **Invoices.** Consultant shall submit a monthly itemized statement that reflects the work completed and hours of Professional Services rendered by Consultant in accordance with this Agreement. The monthly statement shall reference this Agreement and shall contain detailed billing information including, but not limited to, a description of the Professional Services rendered, Work Product completed, the date(s) of the Professional Services, time spent on tasks, name of person(s) performing the Professional Services, billing rates, and total amount billed per each service. Invoices shall also include a breakdown and substantiation (such as receipts or other evidence of actual payments acceptable to CivicSD) of all reimbursable expenses by category of expense and amount. Invoices to CivicSD must be in accordance with the Scope of Services and the Time and Materials Fee Schedule and will be generally payable, if approved, within forty-five (45) calendar days of receipt of each monthly statement. Each invoice shall include a statement of the total contract value, amount billed to date under the contract, and the amount remaining under the contract.

d. **Audit of Records.** Consultant shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to CivicSD or establishing the basis for an invoice, for a minimum of four (4) years from the date of final payment to Consultant. Consultant shall allow an authorized representative of CivicSD to inspect, examine, copy and audit such records during regular business hours upon reasonable advance notice.

3. **EFFECTIVE DATE AND TERM:**

   a. **Effective Date.** This Agreement shall not become effective until the first date on which all of the following are true (the “Effective Date”): (i) this Agreement is approved and signed by the authorized representative(s) of Consultant and delivered to CivicSD; (ii) following all legally required notices and hearings, this Agreement is approved by the governing board of the Successor Agency, CivicSD’s governing board, and/or the authorized representative(s) of CivicSD, as applicable and legally required; and (iii) this Agreement is signed by the authorized representative(s) of CivicSD and delivered to Consultant.

   b. **Term.** Except as provided below, the term of this Agreement (the “Term”) shall continue, unless otherwise terminated early as provided in this Agreement, until the sooner of: (i) such time as the compensation remaining under the contract is expended, or (ii) for a period of two (2) years following the Effective Date. Consultant shall complete the Professional Services within the Term of this Agreement, and shall meet any other schedules and deadlines mutually established, in writing, between the Parties. If the Term of this Agreement would otherwise expire while there is both remaining value under the Agreement and when all tasks within the Scope of Services have not been completed, then this Agreement shall remain in effect until the earlier of
such time as there is no remaining value under this Agreement or all tasks within the Scope of Services have been completed. Except as expressly provided herein, the Term of this Agreement may not be extended or renewed for any additional time period unless by a written amendment to this Agreement.

4. **STANDARD AND RULES OF PERFORMANCE:**

The Professional Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Consultant’s profession currently practicing in the state of California. Whenever the Scope of Services requires or permits approval by CivicSD, it is understood to be approval solely for the purposes of conforming to the requirements of the Scope of Services and not acceptance of any professional or other responsibility for the Professional Services. Such approval does not relieve Consultant of responsibility for complying with the applicable standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of Consultant or its Subconsultants. By performance of the Professional Services and delivery of any completed Work Product, Consultant represents that the Professional Services and the Work Product conform to the requirements of this Agreement and all applicable federal, state, and local laws. If Consultant is retained to perform services requiring a license, certification, registration, or other similar requirement under California or other applicable law, Consultant shall maintain that license, certification, registration, or other similar requirement throughout the term of this Agreement.

5. **INSURANCE:**

a. **Requirement.** Prior to performing the Professional Services herein, throughout the duration of the Agreement, and for twelve (12) months following completion of this Agreement, Consultant shall, at its sole cost and expense, procure and maintain the following types and limits of insurance, containing the additional insured endorsements and cancellation clause set forth herein. Additionally, Consultant shall require that each Subconsultant procure and maintain the types and limits of insurance required by this Agreement prior to performing any services hereunder. The types and limits of insurance are as follows:

   (i) **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

   A. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01), or equivalent, (Including operations, products and completed operations, as applicable), with a limit of not less than $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be $4,000,000.

   B. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto), or equivalent, with a limit of not less than $1,000,000 per accident for bodily injury and property damage.
C. Workers’ Compensation insurance as required by the State of California.

D. Employers’ Liability insurance with the following limits: $1,000,000 each accident; $1,000,000 policy limit bodily injury by disease; $1,000,000 each employee bodily injury by disease.

E. Errors & Omissions Liability insurance appropriate to the Consultant’s profession with a limit of not less than $1,000,000. Architects’ and engineers’ coverage is to be endorsed to include contractual liability, to the extent such coverage is reasonably available in the market.

F. If Consultant maintains higher limits than the minimums shown above, CivicSD requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CivicSD.

b. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CivicSD prior to the commencement of the Professional Services. At CivicSD’s option, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to CivicSD, its officers, officials, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to CivicSD guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. Other Mandatory Insurance Provisions.

(i) The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

A. “CIVIC SAN DIEGO,” “SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO” AND “CITY OF SAN DIEGO” (AND EACH OF THEIR RESPECTIVE OFFICERS, OFFICIALS, EMPLOYEES, AND VOLUNTEERS) ARE COVERED AS ADDITIONAL INSURED AS RESPECTS: LIABILITY ARISING OUT OF WORK OR OPERATIONS PERFORMED BY OR ON BEHALF OF THE CONSULTANT; OR AUTOMOBILES OWNED, LEASED, HIRED, OR BORROWED BY THE CONSULTANT.

B. For any claims related to the Professional Services, Consultant’s insurance coverage shall be primary insurance as respects Civic San Diego, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Civic San Diego, its officers, officials, employees, or volunteers shall be excess of Consultant’s insurance and shall not contribute with it.

(ii) Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled by either Party, except after thirty (30) days prior written notice has been provided to CivicSD.
d. **Acceptability of Insurers.** All insurance required by express provision of this Agreement shall be carried only by California-admitted insurance carriers with a current A.M. Best rating of no less than A:V, unless otherwise acceptable to CivicSD.

e. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of “Civic San Diego,” the “Successor Agency to the Redevelopment Agency of the City of San Diego,” and the “City of San Diego” for all work performed by Consultant, its employees, agents, and Subconsultants.

f. **Verification of Coverage.** Before commencing any Professional Services, Consultant shall furnish CivicSD with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **ALL ENDORSEMENTS MUST BE RECEIVED AND APPROVED BY CIVICSD BEFORE WORK COMMENCES AND NO COMPENSATION SHALL BE DUE AND OWING FOR ANY WORK PERFORMED PRIOR TO THE RECEIPT AND APPROVAL OF THE ENDORSEMENTS.** However, failure by CivicSD to obtain the endorsements shall not operate as a waiver of these insurance requirements.

g. **Subconsultant Insurance Requirements.** Consultant shall require and verify that each Subconsultant maintains insurance meeting all requirements of this Agreement throughout the performance of any work relating to the Professional Services by such Subconsultant. Upon request of CivicSD, the Subconsultant shall provide proof to CivicSD that each Subconsultant has in place the insurance required by this Agreement.

6. **INDEMNITY:**

   a. Consultant shall be responsible for all injuries to persons and for all damage to real or personal property of CivicSD or third parties, to the extent caused by or resulting from Consultant's negligence, or that of its employees, agents, or subconsultants during the performance of or connected with the rendition of services hereunder. The City is an intended beneficiary of any services performed by Consultant for purposes of establishing a duty of care between Consultant and the City.

   b. To the fullest extent permitted by law, Consultant shall defend (with independent counsel approved by CivicSD), indemnify and hold harmless CivicSD, the Successor Agency, the City and all officers and employees of each entity (each, an “Indemnified Party”) from any and all liability, claims, costs (including reasonable attorneys' fees), demands, damages, expenses, and causes of action:

   (i) for damages to real or personal property, or personal injury to any third party to the extent resulting from the negligent error, act or omission of Consultant, its employees, or its agents; or
c. Consultant’s obligations under this Section 6 apply regardless of whether or not a liability is caused or contributed to by the negligence or other act or omission of an Indemnified Party. However, to the extent that liability is caused by the negligence or willful misconduct of an Indemnified Party, Consultant’s indemnification obligation shall be reduced in proportion to the Indemnified Party’s share of liability for its negligence or willful misconduct, if any.

7. SUBCONSULTANTS AND EMPLOYEES:

a. Generally. Consultant shall not retain Subconsultants for any portion of the Professional Services authorized by this Agreement, except as expressly stated herein, without prior written approval of CivicSD. Subconsultant agreements, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. A copy of all contracts between Consultant and any Subconsultant(s) shall be kept on file with Consultant and be made available to CivicSD for inspection upon request at any time during the duration of this Agreement and for a period of three (3) years after the termination of this Agreement. Consultant shall obtain CivicSD’s approval before making any change in a contract between Consultant and any Subconsultant that materially reduces or increases the scope of the Subconsultant services. Consultant shall not charge an administrative fee or mark-up for the cost of the work, if any, performed by an approved Subconsultant. Consultant shall remain solely responsible for Subconsultant’s performance of all obligations under this Agreement at all times during the term of the Agreement, including, but not limited to, the timely and satisfactory performance of the Professional Services.

b. Disputes between Consultant and Subconsultant. CivicSD shall not be made a party to any judicial or administrative proceeding in any dispute that arises between Consultant and any Subconsultant. Consultant agrees to defend and indemnify CivicSD as described in Section 6 of this Agreement in any dispute between Consultant and any Subconsultant.

c. Control and Payment of Subordinates and Subconsultants. The Scope of Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Professional Services subject to the requirements of this Agreement. Consultant shall pay all wages, salaries, and other amounts due or becoming due to Consultant’s personnel, employees and Subconsultants in connection with their performance of any services under this Agreement and as required by law. Consultant shall be responsible for all
reports and obligations respecting such additional personnel, employees, and Subconsultants, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

8. **INDEPENDENT CONSULTANT:**

   a. **Consultant is an Independent Consultant.** Neither Consultant nor any of Consultant’s officers, employees, agents, or Subconsultants, if any, is an employee of CivicSD by virtue of this Agreement or performance of any work under this Agreement.

9. **SUCCESSORS OR ASSIGNS:**

   a. All terms, conditions, and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the Parties.

   b. Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of CivicSD.

10. **CONFLICTS OF INTEREST:**

    a. **Prohibited Interests.** Consultant acknowledges that no official or employee of CivicSD who is authorized in such capacity on behalf of CivicSD to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving this Agreement, may be directly or indirectly financially interested in this Agreement or in any part thereof. Consultant represents and warrants that it has made all required disclosures under CivicSD’s policies and that it has not knowingly or negligently caused any official or employee of CivicSD to participate in this Agreement while having a direct or indirect financial interest in the Agreement. Consultant shall require each Subconsultant to make all required disclosures and shall further require that each Subconsultant include in its Subconsultant agreement an express representation and warranty in substantially the form provided in this paragraph.

    b. **Covenant against Contingent Fees.** Consultant agrees that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this provision, CivicSD shall have the right to terminate this Agreement without liability, or, in its discretion, to deduct from the consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fees, gift, or contingent fee.

    c. **Conflict of Interest Laws Applicable to Public Contracts and Procurement.** Consultant and its Subconsultants are subject to all federal, state, and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code section 1090 et seq. and section 81000 et seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code (“SDMC”) at sections 27.3501 to 27.3595. If Consultant or a Subconsultant violates any conflict of interest law
or any provision of this Section 10, the violation shall be grounds for immediate termination of this Agreement.

d. **Statements of Economic Interest (Form 700).** Consultant and its Subconsultants are subject to CivicSD’s Conflict of Interest Policy and CivicSD’s Policy for Economic Interest (Form 700) for Consultants. If, in performing the Professional Services set forth in this Agreement, Consultant or Subconsultant makes, or participates in, a “governmental decision” as described in title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for CivicSD that would otherwise be performed by a CivicSD employee holding a position specified in CivicSD’s conflict of interest code, Consultant or Subconsultant shall be subject to all provisions of CivicSD’s conflict of interest code requiring the completion of one or more statements of economic interests disclosing Consultant's relevant financial interests. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk of the City of San Diego. Consultant or Subconsultant shall file a Form 700 (Assuming Office Statement) within thirty (30) calendar days of CivicSD’s determination that Consultant must file a Form 700. Consultant or Subconsultant shall also file a Form 700 (Annual Statement) on or before April 1, of each year relevant to this Agreement, disclosing any financial interests held during the previous calendar year.

e. **Ethics Requirements.** If CivicSD requires Consultant or Subconsultant to file a statement of economic interests as a result of the Professional Services performed, pursuant to this Agreement, Consultant or Subconsultant shall be considered a “City Official” subject to the provisions of the City of San Diego Ethics Ordinance, codified in the SDMC at sections 27.3501 to 27.3595, including the prohibition against lobbying the City for one (1) year following the termination of this Agreement. Consultant or Subconsultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

f. **Prohibition Against Gifts.** Consultant and its Subconsultants are subject to CivicSD’s Gift Policy, which prohibits officials and employees of CivicSD from receiving gifts. Consultant and its Subconsultants shall abide by CivicSD’s Gift Policy and shall not knowingly or negligently make gifts to officials or employees of CivicSD.

g. **Conflicting Work.** During the Term, Consultant and any approved Subconsultants shall not act as a Consultant or Subconsultant to any person or entity where that work would conflict with the Professional Services, without the prior written consent of CivicSD.

11. **EQUAL EMPLOYMENT AND NONDISCRIMINATION:**

a. **Compliance with the Equal Opportunity Contracting Program.** Consultant shall comply with the City of San Diego’s Equal Opportunity Contracting Program (“EOCP”) Consultant Requirements. The EOCP requirements are set forth in SDMC sections 22.2701 through 22.2707. Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Consultant shall provide equal opportunity in all
employment practices. Consultant shall ensure that its Subconsultants comply with the City’s EOCP requirements. Nothing in this Section shall be interpreted to hold Consultant liable for any discriminatory practice of its Subconsultants. Consultant shall, at the commencement of this Agreement and annually thereafter, submit to CivicSD a current Work Force Report as required by the EOCP. It shall be the Consultant’s sole responsibility to ensure an annual Work Force Report update is completed and submitted to CivicSD. Consultant shall be required to prepare a current Equal Employment Opportunity (“EEO”) Plan, if so requested by the City of San Diego.

b. Nondiscrimination in Contracting Ordinance. Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of Subconsultants, vendors, or suppliers. Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between Consultant and any Subconsultants, vendors and suppliers.

c. Compliance Investigations. Upon CivicSD’s request, Consultant agrees to provide to CivicSD, within sixty (60) calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that Consultant has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Consultant for each subcontract or supply contract. Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City of San Diego’s Nondiscrimination in Contracting Ordinance (SDMC sections 22.3501-22.3517). Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination Ordinance. Consultant further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of the Nondiscrimination Ordinance.

d. Equal Benefits Ordinance. This Agreement is subject to the City’s Equal Benefits Ordinance (“EBO”), Chapter 2, Article 2, Division 43 of the San Diego Municipal Code. In accordance with the EBO, Consultant must certify it will provide and maintain equal benefits as defined in SDMC section 22.4302 for the duration of the Agreement. Failure to maintain equal benefits is a material breach of this Agreement. Consultant must notify its employees of their equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with Civic San Diego and/or the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners.

Consultant must also give CivicSD and the City access to documents and records sufficient to verify it is providing equal benefits and otherwise complying with EBO requirements. Full text
of the FBO and the Rules Implementing the Equal Benefits Ordinance are posted on the City’s website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

e. **Title 24/Americans with Disabilities Act Requirements.** Any Project plans and specifications prepared pursuant to this Agreement shall meet all current California Building Standards Code, California Code of Regulations, Title 24 (“Title 24”) and Americans with Disabilities Act Accessibility Guidelines (“ADAAG”) requirements, and shall be in compliance with The Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

f. **Americans with Disabilities Act.** Consultant agrees that it is aware of and will comply with San Diego City Council Policy 100-04, adopted by Resolution No. 282153, relating to the federally mandated Americans with Disabilities Act (ADA). Consultant and Subconsultants will be individually responsible for their own ADA program.

12. **OWNERSHIP OF WORK PRODUCT:**

   Upon delivery, the work product, including without limitation, all original reports, writings, recordings, drawings, files, and detailed calculations developed under this Agreement (collectively, “Work Product”) are the property of CivicSD. Consultant agrees that all copyrights which arise from creation of the Work Product pursuant to this Agreement shall be vested in CivicSD and waives and relinquishes all claims to copyright or other intellectual property rights in favor of CivicSD. Consultant makes no representation of the suitability of the Work Product for use in or application to circumstances not contemplated by the Scope of Services.

13. **TERMINATION, DELAY, AND SUSPENSION:**

   a. **Termination for Convenience.** CivicSD may, at its sole option, terminate this Agreement for convenience at any time by providing Consultant with thirty (30) days written notice. Notice of termination shall be delivered by certified mail with return receipt.

   b. **Termination for Cause.** Consultant’s failure to perform or adequately perform any obligation required by this Agreement constitutes a Default entitling CivicSD to terminate this Agreement upon ten (10) days written notice and opportunity to cure provided to Consultant. If the Default is such that it cannot reasonably be cured within ten (10) days, and Consultant (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Consultant shall have such time as determined by CivicSD to be reasonably necessary to cure the Default before termination. The rights and remedies of CivicSD enumerated in this subsection 13(b) are cumulative and shall not limit CivicSD’s rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the Effective Date or enacted or established at a later date, that may be available to CivicSD. Provided that Consultant is not in default or breach, Consultant may terminate this Agreement for breach of CivicSD’s payment obligations under this Agreement by providing CivicSD with thirty (30) days written notice of nonpayment, whereupon CivicSD shall have at least thirty (30) days to cure the breach by providing payment of amounts
due as determined by CivicSD, or to dispute Consultant’s claim that CivicSD breached its payment obligations under this Agreement, before termination is effective. Notice of termination shall be delivered by certified mail with return receipt.

c. **Effect of Termination.** Prior to the effective date of termination, Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of Consultant’s Professional Services under this Agreement and shall deliver to CivicSD all maps, reports, letters, drawings, plans, calculations, specifications, and other documents or records related to Consultant’s Professional Services. Upon termination, Consultant shall be compensated only for those Professional Services which have been adequately rendered to CivicSD as of the effective date of termination, and Consultant shall be entitled to no further compensation. If this Agreement provides for payment of a fixed price amount for all services, the payment for services performed shall be the reasonable value, as determined by CivicSD, of the portion of work completed in conformance with this Agreement as of the effective date of termination. By accepting payment for completion, filing and delivering documents as called for in this paragraph, Consultant discharges CivicSD of all of CivicSD’s payment obligations and liabilities under this Agreement. CivicSD shall not be liable for any fees or costs that Consultant incurs as a result of termination or abandonment.

d. **Extension of Time for Unforeseen Circumstances.** In the event that Consultant is unable to meet the completion date or schedule of services, if any, due to circumstances beyond Consultant’s reasonable control, such as war, riots, strikes, lockouts, work slowdown or stoppage, except strikes, lockouts, or work slowdown or stoppage of Consultant's employees or employees of Subconsultants, acts of God, such as floods or earthquakes, and electrical blackouts or brownouts, Consultant shall inform CivicSD of the additional time required to perform the Professional Services and CivicSD may adjust the schedule.

e. **Right to Suspend for Convenience.** CivicSD may, at its sole option and without cause, suspend all or any portion of Consultant’s performance of the Professional Services, for a reasonable period of time not to exceed six (6) months, or as otherwise agreed upon by the Parties. In accordance with the provisions of this Agreement, CivicSD will give written notice to Consultant of such suspension. If this Agreement is for a fixed price amount, in the event of suspension, CivicSD shall pay to Consultant a sum equivalent to the reasonable value, as determined by CivicSD, of Professional Services that Consultant has satisfactorily performed under this Agreement up to the date of suspension. In order to receive such payment, Consultant shall provide CivicSD with an invoice for Professional Services rendered through the date of suspension and CivicSD shall pay the invoice in accordance with Section 2 of this Agreement. After suspension, CivicSD may rescind such suspension by giving Consultant written notice to recommence services; provided, however, that Consultant shall be entitled to an extension of time equal to the length of the suspension to complete the Scope of Services, unless otherwise agreed to in writing by the Parties. If CivicSD does not provide written notice to recommence services to Consultant within six (6) months of the effective date of suspension, or such longer period as agreed upon by the Parties, this Agreement shall terminate effective immediately.

14. **GENERAL PROVISIONS:**
a. **Product/Service Endorsement.** Consultant acknowledges and agrees to comply with the provisions of the City of San Diego’s Administrative Regulation 95.65 concerning product or service endorsement. Any advertisement identifying or referring to CivicSD or the City of San Diego as the user of a product or service requires the prior written approval of CivicSD or the City of San Diego respectively. In connection with the Professional Services performed pursuant to this Agreement, Consultant shall not recommend or specify any product, supplier, or consultant with whom Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

b. **Confidentiality.** All Professional Services performed by Consultant, including but not limited to all drafts, data, correspondence, proposals, maps, reports, and estimates compiled or composed by Consultant pursuant to this Agreement are for the sole use of CivicSD. Neither the documents nor their contents shall be released to any third party without the prior written consent of CivicSD. This provision does not apply to information that (i) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by CivicSD, (ii) subsequently becomes publicly known through no act or omission by Consultant, (iii) otherwise becomes known to Consultant other than through disclosure by CivicSD, or (iv) is required to satisfy a valid court order.

c. **Drug Free Workplace.** Consultant and Consultant’s officers, employees, agents, and Subconsultants shall comply with the City of San Diego’s Drug-Free Workplace Policy, Council Policy No. 100-17. This policy requires that all City construction Consultants, consultants, grantees, and providers of non-professional services provide a drug-free workplace in accordance with the provisions contained therein. Consultant shall establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, the policy of maintaining a drug-free workplace, available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse. Consultant shall post the drug-free policy in a prominent place and publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that will be taken against employees for violations of the prohibition. Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace set forth in Exhibit D to this Agreement.

d. **City’s Right.** According to Section 3.3 of the Operating Agreement by and between the City of San Diego and Civic San Diego, the City retains the right to review and audit, and the reasonable right of access to Consultant’s and any Subconsultant’s premises to review and audit the Consultant’s or Subconsultant’s compliance with the provisions of the Operating Agreement (“City’s Right”). The City’s Right includes the right to inspect and photocopy same, and to retain copies, outside of the Consultant’s premises, of any and all records related to the Professional Services provided hereunder with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law. The City’s Right includes the right to examine any and all books, records, documents, and any other evidence of procedures and practices that the City determines are necessary to discover and verify that Consultant or Subconsultant is in compliance with all requirements under the Operating Agreement, subject to applicable privileges such as the attorney-
client privilege. If there is a claim for additional compensation or for additional services, the City’s Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred. Consultant and any Subconsultants shall fully comply with this provision within sixty (60) days of the date on which the City mailed a written request to review and audit compliance.

e. **Disputes.** The City shall not be made a party to any judicial or administrative proceeding to resolve any dispute between CivicSD and Consultant.

f. **Laws and Venue.** This Agreement and disputes arising out of or relating to the Agreement or the Parties’ relationship are governed by the laws of the State of California. Any action or proceeding arising out of or relating to the Agreement or the Parties’ relationship shall be brought in a state court situated in the County of San Diego, State of California.

g. **Notices.** Any notice or instrument required to be given or delivered by law or this Agreement shall be effective upon receipt thereof and shall be by personal service or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to:

   **To Civic San Diego:**
   Robert Sutherlin Jr.
   Civic San Diego
   401 B Street, Suite 400
   San Diego, CA 92101

   **With Copy to:**
   Shawn Hagerty, Esq.
   Best Best & Krieger LLP
   665 West Broadway, Suite 1500
   San Diego, CA 92101

   **To Consultant:**
   Neil Murphy
   O’Connor Construction Management, Inc.
   2150 West Washington Street, Suite 203
   San Diego, CA 92110

Either Party may change the address or identity of the person for notices under this paragraph by written notice to the other delivered in accordance with this paragraph.

h. **Integration and Modification.** This Agreement represents the entire understanding of CivicSD and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified, amended, or altered except in writing signed by CivicSD and Consultant.
i. Exhibits. The Exhibits listed below are attached to and incorporated into this Agreement. To the extent there is a material conflict between the provisions of this Agreement and the provisions of the Exhibits, the provisions of this Agreement shall govern.

Exhibit A  Scope of Services
Exhibit B  Time and Materials Fee Schedule
Exhibit C  Time and Materials Reimbursement Schedule
Exhibit D  Consultant Certification for a Drug-Free Workplace

j. Advice of Counsel. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this contract, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor or against either Party by reason of the extent to which each Party participated in the drafting of the contract.

k. Time. Time is of the essence in this Agreement. Any reference to days means calendar days unless otherwise specifically stated.

l. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

m. Electronic Signatures. The Parties agree that this transaction can be conducted pursuant to electronic means, including the use of electronic signatures.

[SIGNATURES ARE ON THE FOLLOWING PAGE.]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective representatives, thereunto duly authorized, as of the date first written above.

CIVIC SAN DIEGO on behalf of and in its role as consultant to the Successor Agency to the Redevelopment Agency of the City of San Diego

By (Signature): _______________________
Reese A. Jarrett
President

Dated this ___ day of __________ 2017

O’CONNOR CONSTRUCTION MANAGEMENT, INC.

By (Signature): _______________________

Print Name: _______________________

Title or Position: _______________________

Dated this ___ day of __________ 2017

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CORPORATE COUNSEL FOR
CIVIC SAN DIEGO

By (Signature): _______________________
Shawn Hagerty, Esq.
Corporate Counsel

Dated this ___ day of __________ 2017
EXHIBIT A

SCOPE OF SERVICES

The Consultant shall develop a Scope of Work, cost estimate, and approximate timeline to complete the improvements described below for the Lyceum Theatre renovation. Consultant shall provide a preliminary schedule of design and construction as well as professional input on additional design elements to enhance theatre-goers experience.

List of Design Elements

The following list of elements shall be included (at minimum) as part of this Scope of Services. Additional items that may be required may also become part of this Scope of Services.

General

- Remove and replace all Fire Doors entering the theatres
- Install new Fire Alarm system that is compatible with the new Fire Doors
- Add additional HVAC above the stage areas
- Rework the return air duct system and add new registers
- Remove and replace the theatre entrance tile
- Add emergency signage throughout the building
- Add work/house lighting and control system
- Provide/Relocate new sound system booth and speakers
- Add electric keypads and locks into the theatre areas
- Install new curtains/drapes to the stage areas
- Clean all existing ducts
- Add new electrical panel(s) for additional electrical needs/requirements
- Add step lighting throughout to meet current ADA codes
- Replace the lighting dimmer system
- Provide a new audio assist system
- Repair numerous ceiling leaks within the stage areas
- Remove and replace a fan coil near the box office
- Replace the marquee sign above the Lyceum Theatre entrance

Main Stage Improvements

- Remove all seating from theatre, cut all bolts and dispose of materials
- Purchase and install new seating for the theatre
- Remove all carpeting from floor
  1. Repair all concrete (sand and fill any cracks)
  2. Paint all concrete flooring with solid color (black) epoxy covering
  3. Paint all walls
  4. Install new lighting to seat ends and aisles (see Appendix E “Current Plan Sheets” EL-101, fixture Z-1)
  5. Install new ADA compliant handrails throughout theatre, as needed
6. Install ADA compliant step ‘noses’
7. Install new receptacles as shown on EP-101 (Key Note #2) (See Appendix E “Current Plan Sheets.”
   • Redo the ADA Dressing Room
   • Reconfigure the edge of the stage

“Black Box” Stage Improvements
• Remove all seating from theatre
  1. Paint all flooring
  2. Paint all walls
• Add safety hand rails
• Install a new ‘reconfigurable’ seat system in this theatre
• Install new carpet on the catwalks
• Replace the sound dampening on the walls
• Patch existing concrete walls
• Relocate the control booth

Dressing Room
• Install new flooring
• Paint ceiling and walls
• Add tile on the walls and backsplashes near sinks
• Rework and replace plumbing and shower enclosures and fixtures
• Remove and replace makeup tables and lighting around mirrors
• Repair/rework closet spaces

TASKS

Site Visit - Mike Mejia, Project Manager, and his estimating team will begin work with a site visit to examine and assess the existing facilities. Consultant will look for special conditions that may affect cost such as special security requirements, cost escalation, specific codes, standards compliance, and other items.

Meetings - An initial meeting with CivicSD and end users will be set to clarify the requirements and priority for upgrades to bring the performance areas up to code and enhance visitor satisfaction. Consultant’s team will also work with CivicSD to anticipate possible problems and identify potential exposures and expenses. Consultant will then begin developing a comprehensive phased approach for the renovations.

Budgeting - Next step will be for Consultant to prepare a Parametric Estimate to develop a project budget. This estimate will be based on historical information from previous performing arts cost estimates Consultant has performed with adjustments made for specific conditions of the Lyceum Theatre.
Tools to establish an initial budget shall include:
- Historical data on Performing Arts projects
- Review & compare the Lyceum Theatre design elements with Consultant’s database on similar projects
- Adjust for specific project requirements & additional project specific scope
- Adjust for project location
- Adjust and anticipate for local market conditions

**Deliverables/Reporting** – Consultant shall provide CivicSD a comprehensive report outlining the scope of work, including recommended solutions, project phasing, and order.

**Review Estimate** – After submitting the Consultant’s Parametric Estimate, a meeting with CivicSD will be held to review the deliverables.

**Revisions** – In order to allow CivicSD to have time to review and make revisions, Consultant shall provide one update following the initial estimate.
EXHIBIT B

TIME AND MATERIALS FEE SCHEDULE

Fee Schedule by Task

<table>
<thead>
<tr>
<th>Service</th>
<th>Estimated Hours</th>
<th>Hourly Rate</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>Cost Estimating</td>
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<td>Scheduling</td>
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<tr>
<td>Scope of Work/Priority Assessment</td>
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<td>$155</td>
<td>$6,200</td>
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<tr>
<td>Meetings</td>
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<td>$155</td>
<td>$1,860</td>
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<td><strong>Total</strong></td>
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<td><strong>$18,910</strong></td>
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</tbody>
</table>

Estimating and scheduling include one update.

Breakdown of Each Area and Associated Cost:
Main Stage: $9,455
Black Box: $6,618
Dressing Room: $2,837

Schedule of Hourly Rates

<table>
<thead>
<tr>
<th>Title</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Professional</td>
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<td>Senior Estimator</td>
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</tr>
<tr>
<td>Senior Professional</td>
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<tr>
<td>Senior Scheduler</td>
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<tr>
<td>Professional Estimator</td>
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</tr>
<tr>
<td>Professional Scheduler</td>
<td>$135</td>
</tr>
</tbody>
</table>
EXHIBIT C

TIME AND MATERIALS REIMBURSEMENT SCHEDULE

1. Administrative, overhead, payroll, and similar charges, secretarial time or secretarial overtime, word processing, photocopying, telephone charges, regular postage, computer use, in-house printing, insurance, and other ordinary business expenses are included in the fees set forth in the Time and Material Fee Schedule and are not separately reimbursable expenses. For certain professional services, reimbursement for word processing, copying and/or computer research may be permitted as specified in the Time and Materials Fee Schedule.

2. Copying and report production expenses by outside copying or printing services, when necessary for the services and included in the Time and Material Fee Schedule, are reimbursable at actual cost, if previously approved by CivicSD.

3. Federal Express and similar delivery services should be avoided without the prior approval of CivicSD. Charges for approved delivery services are reimbursable at actual cost, if previously approved by CivicSD. Other charges may be approved by CivicSD, in its discretion.

4. Lodging, travel costs, including transportation, and meals, will be reimbursed at actual cost, subject to the following restrictions, and supported by receipts acceptable to CivicSD:
   
   (a) No meal, mileage, or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours, unless travel at least fifty (50) miles from Consultant’s office is required for performance of the Scope of Services.
   
   (b) Consultant shall use the most reasonable mode of transportation for any reimbursable travel, and must use its best efforts to plan its travel in advance to obtain reasonable fares. The maximum for air travel will be the actual cost of coach class travel only. The maximum for train travel will be the actual cost of business class travel only. If appropriate, rental cars must be economy/standard class. Insurance, navigation systems and other additional features are not reimbursable.
   
   (c) Hotel expenses shall not exceed $250 per day, inclusive of applicable taxes and fees, but excluding parking;
(d) Meal expenses shall not exceed the following, per person, inclusive of applicable taxes and tip:

<table>
<thead>
<tr>
<th>Meal/ Expense</th>
<th>Reimbursement Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
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</tr>
<tr>
<td>Lunch</td>
<td>$20.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$30.00</td>
</tr>
</tbody>
</table>

(e) CivicSD does not reimburse for cost of alcoholic beverages;

(f) Travel time is not reimbursable or compensable;

(g) Mileage reimbursement may not exceed the current IRS mileage rates. Gasoline and automobile repair expenses for the Consultant’s own vehicle are not reimbursable expenses;

(h) The maximum rate of reimbursement for parking fees is the actual cost of parking, not to exceed $28.00 per day.

(i) Consultant shall retain receipts pertaining to each trip for attachment to invoices for reimbursable costs, and shall furnish written details for each period of travel, including but not limited to: purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate documentation. Website and travel company booking confirmation do not constitute a receipt, but may, when combined with a receipt from the hotel or travel provider, be acceptable documentation.
EXHIBIT D

CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE

PROJECT TITLE: Lyceum Theatre renovation cost estimation services

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that:

O’Connor Construction Management, Inc.

has in place a drug-free workplace program that complies with said policy. I further certify that each Subconsultant agreement for this project contains language which indicates the Subconsultant’s agreement to abide by the provisions of Section 4.10.1 subdivisions A through C of the policy.

Signed ____________________________________________

Printed Name _______________________________________

Title ______________________________________________

Date ______________________________________________
October 10, 2017

Robert Sutherlin
Civic San Diego
400 B Street, 4th Floor
San Diego CA 92101

Dear Mr. Sutherlin,

Under Section XIII (Repairs; Maintenance) of the Master Sublease Agreement between Redevelopment Agency of the City of San Diego (Agency) and Horton Plaza Theatres Foundation (Foundation), filed on July 5, 1985 Document #1197, R-1102, the Foundation agrees to comply, at its expense, with all repair, replacement and maintenance obligations; except that Agency agrees to replace, at its expense, any personal property and fixtures originally installed by Agency on the premises which need replacement due to ordinary wear and tear or obsolescence.

After 32 years, much of the personal property and fixtures are in need of replacement, not only due to ordinary wear and tear, but to comply with current life and safety codes and ADA codes. If not addressed, these will likely lead to lawsuits by patrons that may experience injury.

The Foundation is requesting that the Agency perform the following repair and replacements:

- Install a new fire system and replace all fire doors. The current system will be obsolete as of October 2018.
- Add emergency signage throughout the building in compliance with current codes.
- Repair or replace the obsolete and broken house lighting and control systems. The Foundation has maintained the system, but is no longer able to repair due to the age and degradation.
- Step lighting and handrails are needed in both the Stage and Space Theatres. This system needs to comply with current ADA codes. We’ve had a number of trip and falls resulting in insurance claims due to the poor lighting and steep steps.
- The plumbing lines, shower enclosures, toilets, and sinks in the dressing room are in need of replacement due to the age. The lines are corroded, which results in sewer backups into the dressing rooms.
- The ADA dressing room needs to comply with current ADA codes.
This is just a partial list of the items that need repair or replacement. The Foundation hereby demands that the Agency perform their obligations under the Agreement in order for the Foundation to continue operating the Lyceum Theatres in a safe and successful manner.

Thank you.

Very truly yours,

Sandra L. Simmons
Executive Director

Cc: Daniel Kay
November 8, 2013

Mr. William Fulton, Director, Planning and Neighborhood Restoration Department
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101-4154

Dear Mr. Fulton:

Subject: Oversight Board Action

The City of San Diego Successor Agency (Agency) notified the California Department of Finance (Finance) of its September 24, 2013 Oversight Board (OB) Resolution on September 30, 2013. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, the Agency’s OB Resolution OB-2013-12 related to approving the Fifth ROPS 13-14B, the six-month administrative budget of the successor agency, and certain associated actions, is partially approved. In our email to you dated October 18, 2013, Finance indicated that the review of the ROPS 13-14B would have a separate determination letter. Specifically, this determination letter is in connection with the "certain associated actions" that the Agency authorized within this oversight board action.

The partial approval of this action is associated with the following findings:

- All contracts and agreements between the City of San Diego (City) and the former redevelopment agency that are included in ROPS 13-14B were made for legitimate redevelopment purposes and will be of benefit to the taxing entity.

- The Agency is authorized to enter into services contracts, management contracts and similar contracts, and amendments to existing contracts of that nature, for items that are budgeted in the approved ROPS 13-14B, consistent with HSC sections 24171 (d)(1)(F) and 34177.3(b).

- The Agency is authorized to enter into contracts, and amendments thereto, for the expenditure of non-housing bond proceeds that are budgeted in the approved ROPS 13-14B, as permitted by HSC section 34191.4 (c), upon the Successor Agency’s receipt of a Finding of Completion pursuant to HSC section 34179.7.

Finance approves the portion of the oversight board action that finds all contracts and agreements between the City and the Former RDA that are included in ROPS 13-14B were made for legitimate redevelopment purposes and will be of benefit to the taxing entity.
HSC section 34177 (l) (2) (A) states that a recognized obligation payment schedule is prepared by the successor agency for the enforceable obligations of the former redevelopment agency. However, as defined within HSC section 34171 (d) (1), enforceable obligation applies to legally binding and enforceable agreements or contracts, and does not allow for contractual agreements that have not yet been entered into.

Although HSC section 34177 (a) requires the Agency to continue to make payment due for enforceable obligations, and HSC section 34177.3 (b) authorizes the Agency to create new enforceable obligations, the contracts associated with those new obligations must be submitted to Finance for approval. The mere existence of an Agency obligation does not in itself deem it to be enforceable; it is within Finance’s authority to determine the enforceability of an obligation. The above items lack the specificity required by Finance for approval.

As there are currently no legally binding and enforceable agreements in place but, rather, the unknown, currently non-existent contracts, Finance denies the portions of this resolution that authorize the Agency to enter into services and/or management contracts, as well as contracts for expenditure of non-housing bond proceeds upon receipt of the Finding of Completion. Finance will continue to require the Agency to abide by HSC section 34179 (e), which states that all actions taken by the oversight board shall be adopted by resolution which must be submitted to Finance for review.

In the event the OB desires to amend the portion of the resolution not approved by Finance, Finance is returning it to the board for reconsideration. However, the Agency can move forward with the portion of the resolution approved by Finance.

Please direct inquiries to Wendy Griffe, Supervisor, or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Assistant Program Budget Manager

Cc: Mr. Jeff Graham, President, Civic San Diego
    Mr. Juan Perez, Senior Auditor and Controller Manager, County of San Diego
    California State Controller’s Office
April 1, 2014

Mr. William Fulton, Director, Planning and Neighborhood Restoration Department
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101-4154

Dear Mr. Fulton:

Subject: Oversight Board Action Determinations

The City of San Diego Successor Agency (Agency) notified the California Department of Finance (Finance) of its February 11, 2014 Oversight Board (OB) Resolutions on the dates noted below. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of your OB actions.

Based on our review and application of the law, the Agency's OB Resolutions are approved or denied, as noted below.

<table>
<thead>
<tr>
<th>OB No.</th>
<th>Date Submitted</th>
<th>Action</th>
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<tbody>
<tr>
<td>OB-2014-5</td>
<td>2/18/2014</td>
<td>Third Amendment to Agreement with Community Building Services</td>
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<td>OB-2014-6</td>
<td>2/18/2014</td>
<td>Fourth Amendment to Agreement with Community Building Services</td>
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<td>OB-2014-9</td>
<td>2/18/2014</td>
<td>First Amendment to Agreement with JMJ Incorporated</td>
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<tr>
<td>OB-2014-10</td>
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<td>OB-2014-11</td>
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<td>2/18/2014</td>
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<tr>
<td>OB-2014-13</td>
<td>2/13/2014</td>
<td>Agreement with Harris &amp; Associates</td>
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<tr>
<td>OB-2014-15</td>
<td>2/14/2014</td>
<td>Agreement with Advantage Environmental Consultants</td>
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<td>OB-2014-16</td>
<td>2/14/2014</td>
<td>First Amendment to Agreement with Advantage Environmental Consultants</td>
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<td>Date Submitted</td>
<td>Action</td>
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<tr>
<td>OB-2014-17</td>
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<td>OB-2014-19</td>
<td>2/19/2014</td>
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<td>Second Amendment to Agreement with Pacific Railway Enterprises</td>
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<td>OB-2014-31</td>
<td>2/18/2014</td>
<td>Agreement with Project Professionals</td>
<td>Approved</td>
</tr>
</tbody>
</table>

For those resolutions Finance is approving in which the vendors are contracted to provide services for more than one project and/or location, be advised that expenditures are authorized only when rendered in connection with enforceable obligations. In addition, any services provided wherein the underlying obligation does not meet the definition of an enforceable obligation pursuant to Health and Safety Code section 34171 (d) (1) will not be authorized and will not be eligible for funding. The costs of services are subject to Finance’s review and approval on a subsequent Recognized Obligation Payment Schedule before they can be considered enforceable.

For those resolutions that are not approved, HSC section 34171 (d) (1) (F) states that agreements necessary for the administration or operation of the Agency, such as the cost of maintaining assets prior to disposition, are enforceable obligations. However, HSC section 34181 (e) authorizes an OB to approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities. These amendments, which increase the compensation and/or scope, do not include language substantiating the changes made. Thus, it is not clear whether the amendments are in the best interests of the taxing entities or that the increases in compensation and/or scope are necessary for the administration or operation of the Agency.

This is our determination with respect to the OB actions taken. As authorized by HSC section 34179 (h), Finance is returning these denied OB actions to the board for reconsideration.

Please direct inquiries to Wendy Griffe, Supervisor, or Jenny DeAngelis, Lead Analyst at (916) 445-1546.
Sincerely,

JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Andrew Phillips, CFO, COO & Interim President of Civic San Diego
    Mr. Jon Baker, Senior Auditor and Controller Manager, County of San Diego
    California State Controller’s Office
OVERSIGHT BOARD RESOLUTION NUMBER OB-2017-12

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE PROFESSIONAL SERVICES AGREEMENT WITH O’CONNOR CONSTRUCTION MANAGEMENT, INC. FOR COST ESTIMATION SERVICES ON THE RENOVATION PROJECT FOR THE PERFORMANCE STAGES AND DRESSING AREAS AT THE LYCEUM THEATRE IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26) enacted on June 28, 2011, the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA’s assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA’s operations and to ensure compliance with the Former RDA’s obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency, including the Successor Agency’s approval of each Recognized Obligation Payment Schedule (ROPS); and

WHEREAS, among other things, each ROPS shows the estimated payments owed by the Successor Agency to third parties for enforceable obligations during the upcoming fiscal period and identifies the funding sources that will be used to make such payments; and

WHEREAS, California Health and Safety Code (Code) section 34177.3(a) states that successor agencies “shall lack the authority to, and shall not, create new enforceable obligations
or begin redevelopment work, except in compliance with an enforceable obligation . . . that existed prior to June 28, 2011”; and

WHEREAS, Code section 34177.3(b) permits successor agencies to “create enforceable obligations to conduct the work of winding down the redevelopment agency, including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance”; and

WHEREAS, Code section 34171(d)(1)(E) defines “enforceable obligation” to include “any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy”; and

WHEREAS, Code section 34171(d)(1)(F)(i) further defines “enforceable obligation” to include “[c]ontracts or agreements for the administration or operation of the successor agency, in accordance with this part . . . ”; and

WHEREAS, Code section 34177(a) requires the Successor Agency to continue to make payments due for enforceable obligations, and Code section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, the DOF issued a letter dated November 8, 2013 (November 2013 Letter) that effectively requires the Oversight Board and the DOF to approve all post-AB 26 services contracts, management contracts and similar contracts, and post-AB 26 amendments to existing contracts of that nature, that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond; and

WHEREAS, the DOF also issued a letter dated April 1, 2014 (April 2014 Letter), interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with Code section 34181(e) or that the contract amendment, including any
increase in compensation or scope of services, is necessary for the administration or operation of
the Successor Agency in accordance with Code section 34171(d)(1)(F)(i); and

WHEREAS, to comply with the November 2013 Letter and the April 2014 Letter, the Successor Agency is now presenting, for approval by the Oversight Board and the DOF, the Professional Services Agreement (Consultant Agreement) with O’Connor Construction Management, Inc. (Consultant), which involves the expenditure of up to $18,910 in ROPS-approved funds for cost estimation services related to a project at the Lyceum Theatre to renovate the performance stages and dressing rooms (Project) pursuant to the 1986 Master Sublease Agreement (Sublease Agreement) between the Former RDA and the Horton Plaza Theatres Foundation (HPTF); and

WHEREAS, among other things, the Sublease Agreement requires HPTF to operate and manage the Lyceum Theatre, and requires the Successor Agency to replace fixtures and equipment at the Lyceum Theatre that were originally installed by the Former RDA and are in need of replacement from time to time due to ordinary wear and tear or obsolescence; and

WHEREAS, under the Successor Agency’s approved Long-Range Property Management Plan, the Lyceum Theatre is identified as a “Fulfill Enforceable Obligation” site, and as a result, the Successor Agency will continue to own the long-term leasehold interest in the Lyceum Theatre through a lease term expiring in mid-2035 and is required during the lease term to fulfill its contractual obligations under the Sublease Agreement; and

WHEREAS, a copy of the Consultant Agreement is included as Attachment A to the staff report accompanying this Resolution (Staff Report); and

WHEREAS, a list of the necessary replacements and related renovation work for which the Consultant will provide a cost estimate is included as Attachment B to the Staff Report; and
WHEREAS, a copy of HPTF’s demand letter for the Successor Agency’s completion of necessary replacements and related renovation work at the Lyceum Theatre is included as Attachment C to the Staff Report; and

WHEREAS, the Consultant Agreement will benefit the local taxing entities and will be in their best interests, in that it will permit the Successor Agency to carry out its contractual obligation under the Sublease Agreement, a pre-AB 26 contract, to replace certain fixtures and equipment at the Lyceum Theatre and will avoid the Successor Agency’s breach of its contractual obligation; and

WHEREAS, the Consultant Agreement is necessary for the operation or administration of the Successor Agency because it will permit the Successor Agency to fulfill its contractual obligation under the Sublease Agreement to complete the replacement of fixtures and equipment at the performance stages and dressing rooms of the Lyceum Theatre; and

WHEREAS, the Successor Agency, or Civic San Diego as the contracting agent on its behalf, will pay for the services performed under the Consultant Agreement utilizing the funding sources shown in line item 205 of the ROPS.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

1. The Board finds, in accordance with Code section 34181(e), that the Consultant Agreement is in the best interests of the local taxing entities.

2. The Board finds, in accordance with Code section 34171(d)(1)(F)(i), that the provision of services under the Consultant Agreement, including the compensation amount of $18,910, is necessary for the administration or operation of the Successor Agency.

3. The Consultant Agreement is approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on October 16, 2017.
Chair, Oversight Board
ITEM 4

OVERSIGHT BOARD FOR CITY OF SAN DIEGO
REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: October 13, 2017

SUBJECT: Informational Update regarding Status of Disposition of Amended and
Restated Long-Range Property Management Plan Sale of Property Sites

CONTACT/PHONE NUMBER: Jeff Zinner, Senior Project Manager, Civic San Diego
619-533-7122

STAFF RECOMMENDATION: That the Oversight Board receives an informational update
regarding the status of disposition of Amended and Restated Long-Range Property Management
Plan Sale of Property Sites.

DESCRIPTIVE SUMMARY OF ITEM: Informational item.

BACKGROUND/DISCUSSION: On September 21, 2015, the Oversight Board adopted a
resolution approving the Successor Agency’s Amended and Restated Long Range Property
Management Plan (ARPMP), and on October 15, 2015 the State of California Department of
Finance (DOF) issued a letter granting final approval of the ARPMP. The ARPMP included a
total of 38 sites distributed among the four permissible use categories as follows:

- Sale of Property 6
- Enforceable Obligation 2
- Governmental Use 8
- Future Development 22
  38

On January 25, 2016, the Oversight Board approved a competitive process through which the
Successor Agency ultimately retained the firm of Jones Lang LaSalle (JLL), a commercial real
estate brokerage firm, to assist in the marketing, negotiations, vetting of offers, and to facilitate
disposition of each Sale of Property site. The JLL contract was executed on June 2, 2016.

The ARPMP includes the following six sites in the Sale of Property category:

- Alpha Street Remnant Parcels;
- World Trade Center Garage;
- Two America Plaza (Air Rights Parcel);
- Renaissance at North Park Community Space;
- Sixth Avenue Access Driveway; and
- Beta Street Remnant Parcel.
On June 19, 2017, the Oversight Board approved six Purchase and Sale Agreements (PSA) associated with the sale of all Sale of Property sites, with the exception of the Beta Street Remnant Parcel. Four of these transactions have closed escrow. Escrow remains open on the World Trade Center Garage and the Alpha Street (Kalmia) transactions. As required by the redevelopment dissolution legislation, the Successor Agency caused net sales proceeds from the completed transactions in the cumulative amount $4,693,688.85 to be transmitted to the San Diego County Auditor-Controller who then made a distribution to the Affected Taxing Entities (ATEs).

In the approved ARPMP, the Successor Agency reserved the right to transfer, in its sole discretion, properties from the Future Development category to the Sale of Property category. The Successor Agency is considering taking this action in regards to certain other properties. If additional properties are sold as Sale of Property sites, the PSA’s for these sales would require approval by the Oversight Board.

CONCLUSION: The preceding information and accompanying oral report require no action on the part of the Oversight Board.

Respectfully submitted,

Jeff Zimmer
Senior Project Manager

Concurred by:

Reese A. Jarrett
President, Civic San Diego