

OVERSIGHT BOARD RESOLUTION NUMBER OB-2016-12

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE THIRD AMENDMENT TO THE AGREEMENT WITH WALKER MACY FOR CONSTRUCTION ADMINISTRATION SERVICES ON THE HORTON PLAZA URBAN PARK PROJECT.

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 Third Amendment to the Professional Services Agreement (Third Amendment) with Walker Macy (Consultant), which involves the expenditure of ROPS-approved funds for construction administration services on the development of the Horton Park urban plaza (Project) pursuant to the Owner Participation Agreement (OPA) executed by the Former RDA and the owner of the Horton Plaza Retail Center in January 2011; and

WHEREAS, a copy of the Third Amendment is included as Attachment A to the staff report accompanying this Resolution; and

WHEREAS, the Third 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 Sections 501 and 502 of the OPA to complete the design and construction of the Project and will prevent the Successor Agency's breach of this obligation; and

WHEREAS, the Third Amendment involves an increase in compensation by \$29,300, from the previous amount of \$414,419 (including \$294,582 under the original agreement dated January 31, 2014, plus \$62,864 under the first amendment thereto dated January 6, 2016, plus \$56,973 under the second amendment thereto dated June 20, 2016) to the current amount of \$443,719, in order to allow the continued use of the Consultant's construction administration services on the Project; and

WHEREAS, the increased compensation is warranted because previously unknown conditions and unforeseen circumstances have extended the duration of the Project, requiring additional services from the Consultant to complete the Project; and

WHEREAS, the Third Amendment is necessary for the operation or administration of the Successor Agency because it permits the Successor Agency to fulfill its obligation under Sections 501 and 502 of the OPA to complete the design and construction of the Project; and

WHEREAS, the Successor Agency, or Civic San Diego as the contracting agent on its behalf, will pay for the services performed under the Third Amendment utilizing the funding sources shown in line item 199 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 Third 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 Third Amendment, including any increase in compensation, is necessary for the administration or operation of the Successor Agency.
3. The Third Amendment is hereby approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on August 15, 2016.



Chair, Oversight Board