

OVERSIGHT BOARD RESOLUTION NUMBER OB-2016-16

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE FIRST AMENDMENT TO THE AGREEMENT WITH HARRIS & ASSOCIATES FOR CONSTRUCTION MANAGEMENT SERVICES ON THE LYCEUM THEATRE RENOVATION PROJECT 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 First Amendment to the Professional Services Agreement (Amendment) with Harris & Associates (Consultant), which involves the expenditure of ROPS-approved funds for construction management services necessary for the completion of the Lyceum Theatre renovation project (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, a copy of the Amendment is included as Attachment A 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 replace fixtures and equipment at the Lyceum Theatre, and will avoid the Successor Agency's breach of its contractual obligation; and

WHEREAS, the Amendment involves an increase in compensation by \$30,000, from the previous amount of \$212,555 to the current amount of \$242,555, to allow the Consultant to continue to provide construction management services through completion of the Project; and

WHEREAS, the increased compensation is warranted because numerous changes to the project have caused delays which have increased the time requirements for Consultant's work on the Project; and

WHEREAS, the Amendment is necessary for the operation or administration of the Successor Agency because it permits the Successor Agency to fulfill its contractual obligation under the Sublease Agreement to replace 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 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 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 any increase in compensation, is necessary for the administration or operation of the Successor Agency.
3. The Amendment is hereby approved.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on October 17, 2016.

  
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Chair, Oversight Board