

Resolution No: OB-2021-020

Meeting Date: 10/21/2021

A RESOLUTION OF THE SAN DIEGO COUNTYWIDE
REDEVELOPMENT SUCCESSOR AGENCY OVERSIGHT BOARD
APPROVING AMENDMENT NUMBER 1 TO THE PROFESSIONAL
SERVICES AGREEMENT BETWEEN THE SAN DIEGO
SUCCESSOR AGENCY'S DESIGNATED AGENT AND KIMLEY-
HORN AND ASSOCIATES, INC. FOR CIVIL ENGINEERING
CONSULTING SERVICES ON THE B STREET PEDESTRIAN
CORRIDOR 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, under California's redevelopment dissolution laws, the Former RDA dissolved as of February 1, 2012, at which time the City, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations and commenced winding down the Former RDA's operations; 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 Assembly Bill x1 26 (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

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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

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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, Civic San Diego (CivicSD) performs certain administrative functions on the Successor Agency's behalf related to winding down the Former RDA's operations; 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, Amendment Number 1 to the Professional Services Agreement (First Amendment) between CivicSD (the Successor Agency's designated agent) and Kimley-Horn and Associates, Inc. (Consultant), which involves the expenditure of ROPS-approved funds for civil engineering consulting services to prepare construction documents and provide construction administration necessary for the completion of certain pedestrian pathway and landscaping improvements in the B Street corridor in downtown San Diego (Project) pursuant to an enforceable obligation, as described further below; and

WHEREAS, in 1993, the Former RDA and Catellus Development Corporation (Catellus) entered into the Amended and Restated Development Agreement and the Amended and Restated

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Owner Participation Agreement (collectively, Development/Owner Participation Agreements), which revised development entitlements first granted in 1983 to Catellus' predecessor for approximately 17 acres of land near the Santa Fe Depot in downtown San Diego; and

WHEREAS, the Development/Owner Participation Agreements required Catellus to retrofit and complete base building improvements to the Santa Fe Depot Baggage Building (Baggage Building) and to transfer title of the Baggage Building to the City, or any other governmental agency or non-profit entity designated by the City, for use as a museum or other cultural use; and

WHEREAS, in 2004, the Former RDA, an affiliate of Catellus, and the Museum of Contemporary Art, San Diego (Museum) entered into the Transfer Agreement and Escrow Instructions (Transfer Agreement), by which Catellus transferred title of the Baggage Building to the City and the City leased the Baggage Building to the Museum until July 31, 2091; and

WHEREAS, Section 10.22 of the Transfer Agreement requires the Successor Agency, as successor to the Former RDA, to acquire certain public pedestrian easements within the vacated B Street right of way and, subject to a contribution of \$150,000 from the Museum, to pay for the design, development, construction, and installation of the pedestrian pathway and landscaping improvements in the B Street corridor (i.e., the Project), as further described in the staff report accompanying this Resolution; and

WHEREAS, pursuant to Resolution No. OB-2019-025 adopted on September 19, 2019, the Oversight Board approved the original Professional Services Agreement between CivicSD and the Consultant, involving the maximum expenditure of \$49,600 in ROPS-approved funds for

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an initial phase of civil engineering consulting services, which included schematic design, preliminary cost estimate, and public outreach associated with the Project; and

WHEREAS, the proposed First Amendment will allow the Consultant to complete the second phase of civil engineering consulting services for the Project, which includes preparing construction drawings, obtaining permits through the City of San Diego, and providing construction administration services once construction begins for the Project; and

WHEREAS, the proposed form of the First Amendment is attached to the staff report accompanying this Resolution; and

WHEREAS, the First 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 Transfer Agreement, a pre-AB 26 contract, to complete the design, development, construction, and installation of the Project, and will avoid the Successor Agency's breach of its contractual obligation; and

WHEREAS, the First Amendment involves an increase in the scope of services to encompass the Consultant's second phase of civil engineering consulting services for the Project, including preparation of construction drawings, securing of necessary permits, and provision of construction administration services for the Project; and

WHEREAS, the increased scope of services is warranted in that: (a) construction drawings are needed to reflect the final design and installation of components of the Project and to allow successful future operation of those components; (b) construction of the Project cannot commence without issuance of the necessary permits; and (c) the provision of construction

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administration services will ensure that the Project is completed in a safe, effective manner and in compliance with applicable industry standards, laws, and regulations; and

WHEREAS, the First Amendment also involves an increase in compensation by \$140,747.75, from the previous amount of \$49,600 to the current amount of \$190,347.75, to allow the Consultant to complete the second phase of civil engineering consulting services for the Project; and

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

WHEREAS, the First Amendment is necessary for the operation or administration of the Successor Agency because it permits the Successor Agency to complete the final design, development, construction, and installation of the Project and to thereby fulfill its contractual obligation under the Transfer Agreement related to the Project; and

WHEREAS, the Successor Agency, or CivicSD as the contracting agent on its behalf, will pay for the Consultant's services performed under the First Amendment utilizing the funding sources shown in line item 164 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 First 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 First Amendment, including the increase in scope of services to include the Consultant's second phase of civil engineering consulting services for the Project, as

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well as the related increase in compensation by \$140,747.75, is necessary for the administration or operation of the Successor Agency.

3. The First Amendment is approved.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on October 21, 2021.

Approved as to Form and Legality

By George H. Eiser III, Oversight Board Counsel



Danielle Hegarty

Chair, Oversight Board