

ITEM 1

OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

DATE ISSUED: March 9, 2015

SUBJECT: Adoption of a Resolution Approving the First Amendment to the Agreement with Paradigm Mechanical Corporation, for Heating Ventilation and Air Condition (HVAC) improvements and upgrades for the Lyceum Theater Improvement Project.

CONTACT/PHONE NUMBER: Daniel Kay, 619-533-7159

STAFF RECOMMENDATION: That the Oversight Board approves the First Amendment to the Agreement with Paradigm Mechanical Corporation and makes related findings with respect to the benefit and necessity of the Amendment.

DESCRIPTIVE SUMMARY OF ITEM: Under the First Amendment to the Agreement (“Amendment”) between Civic San Diego (“CivicSD”), acting as the Successor Agency’s contracting agent, and Paradigm Mechanical Corporation (“Contractor”), Contractor will provide additional repairs to the HVAC system that were necessitated by unforeseeable conditions and related to the improvements and upgrades for the Lyceum Theater Improvement Project (“Project”). The unforeseen conditions that were not covered under the original agreement are installation of additional isolation water valves, repair of a variable frequency drive, installation of new drain valves, installation of new vent valves, and repairs to electrical wiring. This Amendment will cover the costs of these additional repairs and improvements in fulfillment of the Successor Agency’s contractual obligation under an existing sublease agreement that qualifies as an enforceable obligation.

BACKGROUND: The purpose of this staff report is to explain the need for execution of the Amendment (attached to this report as Attachment A) as the basis for the expenditure of Successor Agency funds for substantiated work performed by Contractor in accordance with the Amendment. 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 the California Health and Safety Code states that successor agencies “shall lack the authority to, and shall not, create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1 (commencing with Section 33000) or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011.” However, 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) and (F) 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 “contracts or agreements for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements concerning litigation expenses related to assets prior to disposition, and agreements to purchase or rent office space, equipment and supplies, and pay-related expenses” Finally, Section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation.

The Oversight Board’s adopted resolution approving prior Recognized Obligation Payment Schedules (ROPS) included language that authorized the Successor Agency 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 (“Authorization for Services Contracts”), consistent with Sections 34171(d)(1) and 34177.3(b). Although the DOF had approved the Oversight Board’s Authorization for Services Contracts with respect to prior ROPS time periods through ROPS 13-14A, the DOF issued a letter dated November 8, 2013 (“November 2013 Letter”) rejecting the Authorization for Services Contracts for the first time in connection with expenditures during the ROPS 13-14B time period (January through June 2014). The November 2013 Letter 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. To comply with the November 2013 Letter, the Successor Agency has presented, for approval by the Oversight Board and the DOF, various new contracts and new amendments to existing contracts that will involve the Successor Agency’s expenditure of funds in the ROPS 13-14B time period and beyond.

On April 1, 2014, the DOF issued a letter denying the approval of various Successor Agency contract amendments for the provision of services on the following grounds:

[A]ny 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... 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.

Thus, the DOF interpreted the Dissolution Laws to mean that 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).

In light of the DOF's April 1, 2014 letter, the Successor Agency's staff report and resolution addressing the Amendment sets forth the basis upon which such findings can be made and contains the language requested by the DOF for the approval of the Amendment.

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 Civic San Diego, to utilize Contractor to comply with an enforceable obligation that existed prior to June 28, 2011. The enforceable obligation was created through a Lease Agreement ("Lease") between the Former RDA and the owner of the Lyceum, Horton Plaza Associates (HPA), entered into on June 21, 1985, which defined in Article 17, Subsection 17.1, the Former RDA's obligations as follows:

"[Former RDA] agrees at all times, from and after substantial completion of the [Lyceum], at its own expense, to repair, replace and maintain in good and tenantable condition the [Lyceum] and every part thereof, and those additional areas which exclusively serve the [Lyceum]...including, without limitation, the utility meters, pipes and conduits, all fixtures, air conditioning equipment and heating equipment, if any, exclusively serving the [Lyceum] and other equipment therein, including any equipment installed by [Former RDA] which is part of said system, the storefront or storefronts, all signs, locks and closing devices, and all window sash, casement or frames, door and door frames, floor coverings, including carpeting, terrazzo or other special flooring, and all such items of repair maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereof."

The obligation of the Former RDA is further influenced by the Master Sublease Agreement ("Sublease") entered into by the Former RDA and Horton Plaza Theatres Foundation (HPTF) on July 3, 1985, which narrowed the definition of the Former RDA's obligations as follows:

“[HPTF] agrees to comply, at its expense, with all repair, replacement and maintenance obligations of Article 17 of the Lease, and otherwise to be subject to the terms thereof, except that [Former RDA] agrees to replace, at its expense, any personal property and fixtures originally installed by [Former RDA] on the premises which need replacement due to ordinary wear and tear or obsolescence.”

The HVAC system which is the subject of the proposed Project was originally installed by the Former RDA and is in need of replacement due to ordinary wear and tear sustained over its 29-year life.

The Oversight Board and DOF previously approved Oversight Board Resolution OB-2014-14 dated February 11, 2014, authorizing the original agreement with Contractor for the expenditure up to \$248,800 to complete the necessary work. The Amendment provides for additional compensation to the Contractor in the amount of \$1,161 greater than Contractor’s compensation contemplated under the original agreement. Contractor’s costs under the Amendment, are included in prior approved ROPS, line item 205 in ROPS 14-15B covering the period of January 1, 2015 through June 30, 2015. Payments to Contractor beyond the ROPS 14-15B period will be predicated upon the approval of additional expenditures under line item 205 in future approved ROPS.

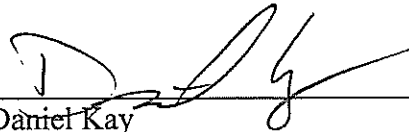
The Amendment will benefit the local taxing entities and will be in their best interests, in that it will ensure that the Successor Agency fulfills its enforceable obligation related to the replacement of fixtures and equipment installed by the Former RDA at the site in accordance with the Sublease Agreement and does not commit any breach or default under the Sublease Agreement that could expose the Successor Agency to the payment of any damages or claims. Moreover, the Amendment will facilitate the maintenance and repair of the Site, which can be reasonably expected to increase property tax revenues through the improvement of a public amenity benefiting the local community. The Amendment is necessary for the operation or administration of the Successor Agency because it will enable the Successor Agency to fulfill its enforceable obligation in compliance with the Sublease Agreement.

Based on the foregoing, CivicSD staff believes that it is appropriate for the Successor Agency to fulfill its statutory responsibility by entering into the Amendment with Contractor for the provision of services and equipment relating to the Project at the Lyceum.


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

Respectfully submitted,

Concurred by:



Daniel Kay
Principal Engineer, Civic San Diego



Andrew Phillips
Chief Financial Officer & COO
Civic San Diego

Attachments: A – First Amendment to the Agreement by and between Civic San Diego and
Paradigm Mechanical Corporation

**FIRST AMENDMENT TO AGREEMENT BY AND BETWEEN CIVIC SAN DIEGO
AND
PARADIGM MECHANICAL CORPORATION**

This First Amendment (“Amendment”), dated this ____ day of _____, 2015, 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, 4th Floor, San Diego, California 92101 (“CivicSD”) and Paradigm Mechanical Corporation, a heating, ventilation, and air conditioning (“HVAC”) company with its relevant place of business at 6550 Federal Boulevard, Lemon Grove, CA 91945 (“Contractor”). CivicSD and Contractor are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties.” This First 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 Agreements for Consulting Services or other Agreements with the City.

D. CivicSD under the Agreement for Equipment Purchase and Installation dated September 6, 2013 (“Agreement”) has retained the services of Contractor to provide services and equipment relating to the Lyceum Theatre HVAC Upgrades (the “Project”).

E. CivicSD and the Contractor desire to amend the aforesaid Agreement to (a) expand the Scope of Services to include the performance of additional repairs necessitated by unanticipated conditions, (b) increase the Lump Sum Agreement Price in order to pay for the performance of those additional services, and (c) extend the Term of the Agreement for a period of one (1) year following the Effective Date of this First Amendment. 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 Contractor 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 First Amendment is authorized pursuant to Section 17(i) of the Agreement.

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:

TERMS

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

2. COMPENSATION: The Lump Sum Agreement Price defined in Section 2 “COMPENSATION” of the Agreement is hereby amended to increase by \$1,161, from the previous amount of \$248,800 to the current amount of \$249,961 (Two Hundred Forty-Nine Thousand Nine Hundred and Sixty-One Dollars). All payments to be made to Contractor 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”). Contractor shall therefore not undertake any work, and shall not be entitled to receive any payment for work until and unless Contractor 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.

3. TERM: Section 3 “EFFECTIVE DATE AND TERM” subsection (b) is hereby revised to read, in its entirety, as follows:

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 one (1) year following the Effective Date of the First Amendment. Contractor 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. CONTINUING EFFECT OF AGREEMENT. Except as amended by this First Amendment, all other provisions of the 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 First Amendment.

[SIGNATURES ARE ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have caused this First Amendment 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: _____
Andrew T. Phillips
Chief Financial Officer and COO

Dated this _____ day of _____ 2015

PARADIGM MECHANICAL CORPORATION

By: _____

Print Name: _____

Position/Title: _____

Dated this _____ day of _____ 2015

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP
CIVIC SAN DIEGO CORPORATE COUNSEL

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

Dated this ____ day of _____ 2015

EXHIBIT A

SCOPE OF SERVICES (AMENDED)

- I. Contractor shall perform the following additional repairs necessitated by unforeseeable conditions:
 - A. Installation of isolation valves.
 - B. Repair of a variable frequency drive.
 - C. Installation of new drain valves.
 - D. Installation of new vent valves.
 - E. Repair of electrical wiring.