

OVERSIGHT BOARD

OF THE CITY OF LONG BEACH AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH

333 West Ocean Blvd., 3rd Floor, Long Beach, CA 90802 Phone: 562.570.6615 Fax 562.570.6215

January 7, 2013

OVERSIGHT BOARD MEMBERS

RECOMMENDATION:

Adopt a resolution approving the decision of the Successor Agency to the Redevelopment Agency of the City of Long Beach to approve and authorize the City Manager to execute a Settlement Agreement with Great American Insurance Company and/or Armand Gonzales, Inc., dba Gonzales Construction; and

Approve and authorize the City Manager to execute a Takeover Agreement with Great American Insurance Company, to complete construction of Fire Station 12 and Emergency Resource Center.

DISCUSSION

On March 15, 2010, the City of Long Beach, through its former Redevelopment Agency, entered into a contract with Armand Gonzales, Inc., dba Gonzales Construction (Gonzales), for the construction of Fire Station 12 and Emergency Resource Center (Project) located at 1199 East Artesia Boulevard. The approved contract is for \$6,498,345. The former Redevelopment Agency also approved a 25 percent contingency to cover additional work.

On November 15, 2011, the City declared Gonzales in default of the contract and made demand upon Great American Insurance Company (Surety), the bonding company for Gonzales, to perform and complete the Project. Subsequently, on November 22, 2011, Gonzales filed a claim against the former Redevelopment Agency, which was denied by the City in a written response on January 10, 2012.

Following a series of meetings between the City, Surety, and Gonzales, and in an attempt to complete the Project in a timely and cost-effective manner, the parties agreed to allow Gonzales to continue work on the Project. On June 14, 2012, Gonzales filed a lawsuit against the Successor Agency, alleging breach of contract among various other causes of action. Subsequently, on October 4, 2012, the City sent a letter to Gonzales declaring them in default of the terms of the contract and demanding corrective action. Finally, in a letter dated November 8, 2012, the Successor Agency terminated its contract with Gonzales.

In an attempt to preserve the work completed and expedite completion of the Project, it is proposed that the Successor Agency and Surety enter into a Takeover Agreement. The Takeover Agreement details how Surety will complete the Project and includes the following terms:

OVERSIGHT BOARD MEMBERS

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- The existing contract, except where modified by the Takeover Agreement, remains in full force and effect.
- Surety will arrange for the completion of the Project by a competent and qualified contractor approved by the Successor Agency and shall meet the qualification requirements of the original contract.
- Successor Agency shall pay Surety, or its designee, all remaining contract amounts, according to the terms and conditions of the contract, and in accordance with the payment terms established in the contract.
- The new contractor will be a subcontractor to Surety, and no contractual obligation will exist between the Successor Agency and the new contractor. However, all Project activities shall be coordinated with the Successor Agency's representative.
- Surety shall, to the extent provided in the contract, and as required by the performance bond, defend and indemnify the Successor Agency against acts and omissions of the new contractor. Surety shall require the new contractor to complete the Project, including correction of defective work.

Contemporaneously with the Takeover Agreement, in consideration of the desire by all parties to avoid the inconvenience, expense, and uncertainty of further litigation of their disputes, a Settlement Agreement is proposed. The Settlement Agreement details the compromise and settlement of claims between all parties relating to the Project, including any of the facts, circumstances, and transactions upon which the Gonzales lawsuit is based.

The Settlement Agreement outlines the following terms:

- The existing contract, except where modified by the Settlement Agreement, remains in full force and effect.
- The adjusted completion date for the Project is August 31, 2013.
- The Successor Agency waives any claim for liquidated damages or any other damages through the adjusted completion date. If the Project is not substantially complete by the adjusted completion date, then the Successor Agency shall be entitled to assert any and all damages provided in the contract.
- Within 15 days of the effective date of the Settlement Agreement, the Successor Agency shall remit payment to Surety in the amount of \$717,546.32 for payments withheld due to stop notices. Additionally, the Successor Agency shall make a one-time payment by issuance of a change order to Surety in the amount of \$1,500,000. This amount is in full satisfaction of any and all claims against the City by Gonzales, Surety or any other involved party, and settles all change order requests received to date, except for those change orders where work has not commenced, or which will be negotiated separately as provided in the Settlement Agreement. Surety also agrees to immediately assign a completion contractor and forego a lengthy competitive bidding process.

OVERSIGHT BOARD MEMBERS

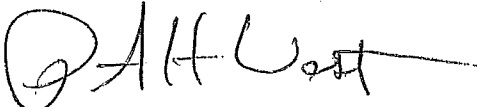
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- Upon full performance of the terms in the Settlement Agreement, the Gonzales lawsuit shall be dismissed in its entirety.

This matter was approved by the Successor Agency December 10, 2012.

Respectfully submitted,



PATRICK H. WEST
CITY MANAGER

PHW:AJB:RMZ:TJK

R:\Successor Agency\OVERSIGHT BOARD\STAFF REPORTS Oversight Board\2013A January 7\FS12 - Settlement Agreement.doc

Attachment: Resolution

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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RESOLUTION NO. _____

A RESOLUTION OF THE OVERSIGHT BOARD OF THE CITY OF LONG BEACH AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH AUTHORIZING THE CITY MANAGER TO EXECUTE A SETTLEMENT AGREEMENT WITH GREAT AMERICAN INSURANCE COMPANY AND/OR ARMAND GONZALES, INC. DBA GONZALES CONSTRUCTION

WHEREAS, on March 15, 2010, the former Redevelopment Agency of the City of Long Beach ("RDA") entered into a construction contract ("Contract") with Armand Gonzales, Inc. dba Gonzales Construction ("Gonzales") for the construction of Fire Station 12 and Emergency Resource Center ("Project") located at 1199 East Artesia Boulevard; and

WHEREAS, the City of Long Beach, as Successor Agency to the Redevelopment Agency of the City of Long Beach ("Successor Agency"), has assumed all rights and obligations of the RDA under the Contract; and

WHEREAS, on November 15, 2011, the RDA declared Gonzales in default of the contract and made demand upon Great American Insurance Company ("Surety"), the bonding company for Gonzales, to perform and complete the Project; and

WHEREAS, the Successor Agency, Surety, and Gonzales, in an attempt to complete the Project in a timely and cost-effective manner, agreed to allow Gonzales to continue work on the Project; and

WHEREAS, on June 14, 2012, Gonzales filed a lawsuit against the Successor Agency alleging breach of contract; and

WHEREAS, on October 4, 2012, the City sent a letter to Gonzales declaring

1 it in default of the terms of the Contract; and

2 WHEREAS, on November 8, 2012, the Successor Agency terminated the
3 Contract with Gonzales; and

4 WHEREAS, in an attempt to preserve the work already completed and
5 expedite completion of the Project, it is proposed that the Successor Agency and Surety
6 enter into a Takeover Agreement; and

7 WHEREAS, to avoid the inconvenience, expense and uncertainty of further
8 litigation, a Settlement Agreement is proposed to be executed by the Successor Agency
9 and Gonzales contemporaneously with the Takeover Agreement;

10 NOW, THEREFORE, the Oversight Board of the City of Long Beach as the
11 Successor Agency to the Redevelopment Agency of the City of Long Beach ("Oversight
12 Board") resolves as follows:

13 Section 1. Approve the decision of the Successor Agency to authorize
14 the City Manager to execute (i) a Takeover Agreement with Great American Insurance
15 Company; and (ii) a Settlement Agreement with Great American Insurance Company
16 and/or Armand Gonzales, Inc. dba Gonzales Construction.

17 Section 2. This resolution shall take effect immediately upon its adoption
18 by the Oversight Board, and the City Clerk shall certify the vote adopting this resolution.

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PASSED, APPROVED, and ADOPTED at a meeting of the Oversight Board of the City of Long Beach as the Successor Agency to the Redevelopment Agency of the City of Long Beach held this ____ day of _____, 2013 by the following vote:

Ayes: _____

Noes: _____

Absent: _____

Chairperson, Oversight Board

APPROVED:

Secretary, Oversight Board

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
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