

**Agenda Of The Regular Meeting – Oversight Board to the Successor Agency to the  
Redevelopment Agency of the City of National City  
Council Chambers  
Civic Center  
1243 National City Boulevard  
National City, California  
Wednesday – June 17, 2015 – 3:00 P.M.**

**Open To The Public**

**Please complete a request to speak form prior to the commencement of the meeting and submit it to the Oversight Board Secretary.**

It is the intention of your National City Oversight Board to be receptive to your concerns in this community. Your participation in local government will assure a responsible and efficient City of National City. We invite you to bring to the attention of the Board Chairman any matter that you desire the National City Oversight Board to consider. We thank you for your presence and wish you to know that we appreciate your involvement.

**ROLL CALL**

**Pledge of Allegiance to the Flag by Chairman Ron Morrison**

**Public Oral Communications (Three-Minute Time Limit)**

**NOTE:** Pursuant to state law, items requiring National City Oversight Board action must be brought back on a subsequent National City Oversight Board Agenda unless they are of a demonstrated emergency or urgent nature.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**It Is Requested That All Cell Phones  
And Pagers Be Turned Off During The Meetings**

## **OVERSIGHT BOARD ACTIONS**

1. Approval of the Minutes of the Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency meeting held on May 20, 2015.
2. Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving an Administrative Budget for the ROPS 15-16A period (July 1, 2015 through December 31, 2015). (Successor Agency) (Reso 2015-07)
3. Resolution of the Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency authorizing the chairman to execute a settlement agreement between the Successor Agency and Rosenow Spevacek Group, Inc., to resolve pending arbitration. (Successor Agency) (Reso 2015-08)

## **REPORTS**

4. Update on Redevelopment Issues
5. July Oversight Board

## **ADJOURNMENT**

Adjourn to the next Regular meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency scheduled on July 15, 2015 at 3:00 p.m. in Council Chambers, Civic Center.

**MINUTES OF THE SPECIAL MEETING OF THE OVERSIGHT BOARD TO THE  
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF  
THE CITY OF NATIONAL CITY**

**MAY 20, 2015**

This Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency was called to order at 3:13 pm by Chairman Ron Morrison.

**ROLL CALL**

Board Members Present: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke  
Board Members Absent: McCarthy

**OTHER STAFF PRESENT:** Brad Raulston, Executive Director; Claudia Silva, City Attorney; Janel Pehau, Accountant

**PLEDGE OF ALLEGIANCE** by Chairman Ron Morrison

**PRESENTATIONS:** None

**OVERSIGHT BOARD ACTIONS**

1. **SUBJECT:** Approval of the Minutes of the Regular Meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of National City Meeting held on February 18, 2015.

**RECOMMENDATION:** Approve minutes as presented.

**ACTION:** Motion by Perri, seconded by Desrochers to approve the minutes of the Regular Meeting of the Oversight Board meeting held February 18, 2015. Motion carried by the following vote:

Ayes: Morrison, Perri, Carson, Fellows, Hentschke, Desrochers  
Absent: McCarthy

2. **SUBJECT:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency Approving and Ratifying an Agreement with Urban Futures, Inc. for Financial Advisory Services for the Period of December 1, 2014 to June 30, 2016 for an Amount not to Exceed #50,000. (Successor Agency) (Reso 2015-03)

**RECOMMENDATION:** Approve the Resolution (**Resolution 2015-01**).

**ACTION:** Motion by Carson, seconded by Perri to approve the Resolution.

Motion carried by the following vote:

Ayes: Fellows, Carson, Desrochers, Morrison, Perri  
Abstain: Hentschke  
Absent: McCarthy

3. **SUBJECT:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving an Agreement for Legal Services between the Successor Agency of the Community Development Commission as the National City Redevelopment Agency ("Successor Agency") and the law firm of Mazzarella & Mazzarella, LLP, superseding the prior Agreement for Legal Services between the Successor Agency, City and Mazzarella Lorenzana, LLP, contingent upon state Department of Finance approval, with no increase in the previously approved not to exceed amount of \$250,000 for hourly fees. (Successor Agency) (Reso 2015-04)

**RECOMMENDATION:** Approve the Resolution (**Resolution 2015-04**).

**ACTION:** Motion by Desrochers, seconded by Fellows to approve the Resolution. Motion carried by the following vote:  
Ayes: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke  
Absent: McCarthy

4. **SUBJECT:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency approving an Administrative Budget for the ROPS 14-15B period (January 1, 2015 through June 30, 2015). (Successor Agency) (Reso 2015-05)

**RECOMMENDATION:** Approve the Resolution (**Resolution 2015-05**).

**ACTION:** Motion by Carson, seconded by Hentschke to approve the resolution. Motion carried by the following vote:  
Ayes: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke  
Absent: McCarthy

5. **SUBJECT:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency authorizing the Chairman to execute a Second Amendment to the Agreement for legal services with Opper & Varco, LLP, for continued legal work regarding environmental remediation, underground storage tanks, and environmental matters related to Successor Agency obligations, and to increase the not to exceed amount by \$80,000, for a total not to exceed amount of \$130,000. (Successor Agency) Reso 2015-06

**RECOMMENDATION:** Approve the Resolution (**Resolution 2015-06**).

**ACTION:** Motion by Carson, seconded by Hentschke to approve the resolution. Motion carried by the following vote:  
Ayes: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke  
Absent: McCarthy

## REPORTS

### 6. Update on Redevelopment Issues

Brad Raulston gave an update on the following:

Meet and Confer with the Department of Finance regarding the Sewer Fund Loan Repayment

The first draft of the Long Range Property Management Plan is in process and will be presented in an upcoming meeting

## ADJOURNMENT

**ACTION:** Motioned by Morrison, seconded by Desrochers to adjourn the meeting.

Motion carried by the following vote:

Ayes: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke

Absent: McCarthy

The regular meeting was adjourned to the next Regular Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency to be held on June 17, 2015 at 3:00 p.m., Council Chambers – National City Civic Center, California.

The meeting adjourned at 3:33 p.m.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Secretary

The foregoing minutes were approved at the Regular Meeting of June 17, 2015.

\_\_\_\_\_  
Oversight Board Chairman

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO  
THE COMMUNITY DEVELOPMENT COMMISSION  
AS THE NATIONAL CITY REDEVELOPMENT AGENCY  
AGENDA STATEMENT**

**MEETING DATE:** June 17, 2015

**AGENDA ITEM NO. 2**

**ITEM TITLE:** Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency Approving an Administrative Budget for the ROPS 15-16A period (July 1, 2015 through December 31, 2015).

**PREPARED BY:** Brad Raulston, Executive Director      **DEPARTMENT:** Successor Agency  
**PHONE:** 619 336-4256

**APPROVED BY:** 

**EXPLANATION:**

Health and Safety Code section 34177(j) requires the Successor Agency to prepare a proposed administrative budget for each ROPS period and submit it to the Oversight Board for approval. The proposed administrative budget is to include estimated amounts for Successor Agency administrative costs for the upcoming six-month period, the proposed sources of payment for those costs, and proposals for arrangements for administrative and operations services. The estimated administrative costs for the Recognized Obligation Payment Schedule (ROPS) 15-16A period totals \$300,000 and are authorized to be funded by Redevelopment Property Tax Trust Fund (RPTTF) revenues. Administrative and operations services are provided through a combination of City of National City staff and outside contractors. See attached table for the details.

The Successor Agency Board reviewed and approved the ROPS 15-16A administrative budget on June 16, 2015 and requests approval by the Oversight Board.

**FINANCIAL STATEMENT:**

**APPROVED:** \_\_\_\_\_ **Finance**

**ACCOUNT NO.**

**APPROVED:** \_\_\_\_\_ **MIS**

The administrative budget totals \$300,000 for the ROPS 15-16A period.

**ENVIRONMENTAL REVIEW:**

This is not a project and, therefore, not subject to environmental review.

**ORDINANCE:**    **INTRODUCTION:**                      **FINAL ADOPTION:**

**STAFF RECOMMENDATION:**

Adopt the Resolution.

**BOARD / COMMISSION RECOMMENDATION:**

Successor Agency Board: Adopt the Resolution

**ATTACHMENTS:**

1. ROPS 15-16A Proposed Administrative Budget for the Successor Agency
2. OB Resolution 2015- **01**

**Successor Agency to the Community Development Commission  
as the National City Redevelopment Agency**

**Attachment 1**

**ROPS 15-16A Administrative Budget**

**Expenditures**

	Annual Salaries & Benefits	% Allocated	Annual Cost	Six Month Cost ROPS 15-16A
<b>Personnel*</b>				
Executive Director	221,300	40%	88,520	44,260
Executive Secretary	65,500	75%	49,125	24,563
City Manager	252,130	15%	37,820	18,910
Executive Assistant	87,155	5%	4,358	2,179
City Attorney	266,775	10%	26,678	13,339
Executive Assistant	82,600	3%	2,478	1,239
City Clerk/Records Management Officer	138,285	15%	20,743	10,371
Administrative Secretary	71,100	10%	7,110	3,555
Property Agent	41,800	50%	20,900	10,450
Community Development Manager	125,400	50%	62,700	31,350
Planning Technician	67,600	5%	3,380	1,690
Director of Finance	172,300	5%	8,615	4,308
Financial Services Officer	127,300	5%	6,365	3,183
Management Analyst	104,400	10%	10,440	5,220
Financial Analyst (part time)	40,000	90%	36,000	18,000
Senior Accountant	90,900	10%	9,090	4,545
Accountant	72,900	4%	2,916	1,458
Accountant	77,300	10%	7,730	3,865
Buyer	68,500	5%	3,425	1,713
Accounting Assistant	58,500	5%	2,925	1,463
Accounting Asslstant	55,200	5%	2,760	1,380
Accounting Assistant	58,500	5%	2,925	1,463
Accounting Assistant	54,900	5%	2,745	1,373
Various	N/A	N/A	40,000	20,000
<b>Total Personnel</b>			<b>459,747</b>	<b>229,873</b>
<b>Maintenance &amp; Operations</b>				
Contract Services - Legal Services for Successor Agency				7,500
Contract Services - Legal Services for Oversight Board				7,500
Contract Services - Accounting/Audit Support				10,000
Other Operating Expenditures**				45,127
<b>Total M&amp;O</b>				<b>70,127</b>
<b>Total Expenditures</b>				<b>300,000</b>
<b>Funding Sources</b>				
RPITF - Administrative Allowance				300,000
Other Revenues				-
<b>Total Funding</b>				<b>300,000</b>

\* Personnel responsibilities include, but are not limited to, providing executive direction and legal guidance for the operations of scheduling and maintaining records of the meetings of the Successor Agency and the Oversight Board, preparing agenda materia SA and the Oversight Board, managing litigation, developing the ROPS for each six-month period, projecting and managing the ca the SA, implementing a long range property management plan, managing contracts with vendors, managing the payments to vi accounting for all transactions of the SA in the general ledger, and preparing annual financial statements. Not represented on thi schedule, but playing an important policy role in the administration of the Successor Agency are the City's Mayor and Council wh the Board for the Successor Agency, and the Mayor who also serves as the Chair of the Oversight Board.

\*\* Other operating expenses include, but are not limited to, bank service charges, landscape maintenance district assessments, title searches, information technology support, and miscellaneous other costs.

RESOLUTION NO. 2015 – 07

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE COMMUNITY DEVELOPMENT COMMISSION  
AS THE NATIONAL CITY REDEVELOPMENT AGENCY  
APPROVING AN ADMINISTRATIVE BUDGET FOR THE ROPS 15-16A PERIOD  
(JULY 1, 2015 THROUGH DECEMBER 31, 2015)

WHEREAS, the Oversight Board ("Oversight Board") of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Successor Agency") has been established to take certain actions to wind down the affairs of the now dissolved Community Development Commission as the National City Redevelopment Agency ("CDC") in accord with AB 26, as amended in AB 1484; and

WHEREAS, Health and Safety Code section 34177(j) requires that each Successor Agency prepare a proposed administrative budget for each upcoming six-month period and submit it to its oversight board for its approval; and

WHEREAS, such an administrative budget is to include estimated amounts for successor agency administrative costs, the proposed sources of payment, and proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity; and

WHEREAS, on June 16, 2015, the Successor Agency's Executive Director submitted to its Board a proposed administrative budget for the Recognized Obligation Payment Schedule ("ROPS") 15-16A period, and said budget has been discussed, deliberated upon, and approved in public session, for submission to the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Oversight Board"); and

WHEREAS, on June 17, 2015, the Oversight Board reviewed said administrative budget and determined that it meets the statutory requirement.

NOW, THEREFORE, BE IT RESOLVED by Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency as follows:

**Section 1.** The administrative budget for the ROPS 15-16A period, beginning July 1, 2015 and continuing through and including December 31, 2015, with expenditures totaling \$300,000 and attached hereto and incorporated by this reference herein as Exhibit A (the "Administrative Budget"), is hereby approved.

**Section 2.** The Executive Director of the Successor Agency and his designees are hereby authorized and directed to evaluate and execute necessary changes to the Administrative Budget as may be appropriate and/or as required by law, whether pursuant to statute, by court order or as otherwise required or authorized by law, to capture all the costs the Successor Agency may have in the performance of its duties.



**Section 3.** The Executive Director of the Successor Agency, or designee, is hereby authorized and directed to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board, such actions to include but not limited to posting and distributing the Administrative Budget as may be required by law.

**Section 4.** The Oversight Board concurs with the Successor Agency's determination that approval of this Resolution does not represent a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

**Section 5.** The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

**Section 6.** Pursuant to California Health and Safety Code Section 34179(h), the State of California Department of Finance may review Oversight Board action; therefore, this Resolution shall be effective on the date five (5) business days after its adoption, absent and pending any request for review by the State of California Department of Finance.

PASSED and ADOPTED this 17<sup>th</sup> day of June, 2015.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

\_\_\_\_\_  
Ron Morrison, Chairman

\_\_\_\_\_  
Brad Raulston, Executive Director  
Secretary to the Oversight Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Oversight Board Counsel  
Edward Z. Kotkin, Esq.  
Law Offices of Edward Z. Kotkin

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO  
THE COMMUNITY DEVELOPMENT COMMISSION  
AS THE NATIONAL CITY REDEVELOPMENT AGENCY  
AGENDA STATEMENT**

**MEETING DATE:** June 17, 2015

**AGENDA ITEM NO. 3**

**ITEM TITLE:** Resolution of the Oversight Board Successor Agency to the Community Development Commission as the National City Redevelopment Agency authorizing the chairman to execute a settlement agreement between the Successor Agency and Rosenow Spevacek Group, Inc., to resolve pending arbitration.

**PREPARED BY:** Claudia Gacitua Silva, City Attorney

**DEPARTMENT:** Successor Agency

**PHONE:** 336-4222

**APPROVED BY:** \_\_\_\_\_

**EXPLANATION:**

Please see attached staff report.

**FINANCIAL STATEMENT:**

**ACCOUNT NO.**

N/A

**APPROVED:** \_\_\_\_\_ **Finance**

**APPROVED:** \_\_\_\_\_ **MIS**

**ENVIRONMENTAL REVIEW:**

N/A

**ORDINANCE:** INTRODUCTION:  FINAL ADOPTION:

**STAFF RECOMMENDATION:**

N/A

**BOARD / COMMISSION RECOMMENDATION:**

Approve the Resolution

**ATTACHMENTS:**

1. Successor Agency Staff report
2. Settlement Agreement
3. Proposed OB Resolution 2015-08

## Staff Report

### BACKGROUND

On February 20, 2007, the former Community Development Commission of the City of National City ("CDC") entered into an Agreement with Rosenow Spevacek Group, Inc. (RSG) for the 2007 Redevelopment Plan Amendment. The 2007 Redevelopment Plan Amendment was prepared by RSG and eventually adopted in July of 2007. On or about September 2007, the 2007 Redevelopment Plan Amendment was challenged by the Community Youth Athletic Center (the CYAC matter). In addition to the reverse validation challenge to the 2007 Redevelopment Plan Amendment, the CYAC matter alleged violations of the public records act, due process, and takings.

The CYAC matter was dismissed, appealed, remanded, tried, appealed, and remanded over the years between 2007 and 2015. Overall, the appellate court affirmed the invalidation of the 2007 Redevelopment Plan Amendment and found a violation of the public records act based upon records not being furnished by RSG for disclosure. The court reversed the trial court's due process findings, affirmed the trial court's ruling regarding the other denied causes of action (upon which CYAC had cross-appealed), and remanded the matter back to the trial court to re-hear the attorneys fees in light of the ruling. In April 2015, the trial court entered judgment in the CYAC matter, awarding fees in the amount of \$2,016,249.87.

In or about 2011, the City and CDC commenced arbitration proceedings seeking damages against RSG arising out of work performed by RSG pursuant to its contract with the CDC (the Arbitration Proceedings).

### THE LAWSUIT

In the Arbitration Proceedings, the City and CDC (collectively, City) alleged that RSG negligently performed its contractual obligations which resulted in compensatory damages in excess of \$30,000,000. More specifically, the invalidation of the 2007 Redevelopment Plan Amendment (as well as the public record act violations) in the CYAC matter resulted in compensatory damages for the expended and awarded attorneys' fees amounting to over \$3,000,000; compensatory damages representing the loss of revenues which were dependent upon validation of the 2007 Redevelopment Plan, in the form of increased sales tax to the City, increased property tax to the City, and the value of developer-provided infrastructure improvements, amounting to no less than \$20,000,000; and, the related damages amounting to no less than \$9,000,000 from the reduced bonding capacity (2011 bonds).

RSG denied liability for all of the claims and damages alleged by the City. Moreover, RSG alleged the damages were speculative and non-compensable.

During the course of the litigation, extensive discovery was undertaken by the parties. The City determined that RSG was insured with an aggregate policy limit of \$2,000,000, reduced by claim expenses. The Arbitration Proceedings defense costs

have been paid from the insurance policy proceeds, thereby reducing the available policy limits.

The principals present and involved in the 2007 Redevelopment Plan Amendment are no longer active with the company. RSG, prior to the dissolution of redevelopment, based much of their business on redevelopment.

During the pendency of the Arbitration Proceedings, the parties engaged in two lengthy negotiations conducted at two mediation sessions over many months. The parties have agreed to the proposed settlement, contingent upon approval by the Oversight Board and Department of Finance.

### THE SETTLEMENT

RSG has agreed to pay the City and CDC the balance of the \$2,000,000 policy limits that remain after payment has been made of all legal fees and costs incurred by RSG in connection with the defense and settlement of the Arbitration Proceedings. Currently, the amount is estimated at about \$1.8M.

### RECOMMENDATION

Staff recommends authorizing the Chairman to execute the settlement agreement, and perform actions necessary in settlement of this litigation.

These actions would require Oversight Board approval and DOF approval before they are final. The settlement agreement contains these contingencies. This item is on the Oversight Board agenda for June 17, 2015.

**SETTLEMENT AGREEMENT AND MUTUAL  
GENERAL RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE OF ALL CLAIMS (hereinafter "Agreement") is made and entered into by and between the parties hereto, namely, THE CITY OF NATIONAL CITY and what was formerly the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY and is now the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY (collectively the "CITY") on the one hand and ROSENOW SPEVACEK GROUP, INC. ("RSG"), on the other hand. CITY and RSG are sometimes hereinafter referred to collectively as the "Parties".

**RECITALS**

This agreement is made with reference to the following facts:

A. In or about 2011, CITY commenced arbitration proceedings against RSG arising out of work performed by RSG pursuant to its contract with the Community Development Commission of the City of National City dated February 20, 2007 (the "Arbitration Proceedings").

B. In the Arbitration Proceedings, CITY alleged that RSG negligently performed its contractual obligations and that in the result, the San Diego Superior Court invalidated National City's Redevelopment Plan in an action filed by Community Youth Athletic Center and others (collectively "CYAC") against the City of National City and National City Community Development Commission (collectively "CDC") (hereinafter the "Underlying Action"). The Superior Court's judgment invalidating the

Redevelopment Plan in the Underlying Action was affirmed by the Court of Appeal in 2013.

C. In the Arbitration Proceedings, CITY sought compensatory damages from RSG, representing (1) attorney fees totaling \$2,016,249.87 awarded against CDC and in favor of CYAC and other Interested Parties in the Underlying Action; (2) attorney's fees totaling \$1,064,574.62 incurred by the CDC in defending the Underlying Action; (c) attorney's fees totaling \$110,029.49 as of February 28, 2015, with additional attorney's fees incurred but not yet paid by CITY to prosecute the Arbitration Proceedings; and (4) compensatory damages representing (a) loss of revenues caused by disruption of improvement and development within the City which was dependent upon validation of the Redevelopment Plan Amendment, in the form of increased sales tax revenue, increased property tax revenue, the value of developer-provided infrastructure improvements, etc., of no less than \$20,000,000.00; and (b) additional expenses incurred by CITY related to bonding expenses caused by the invalidation proceedings in the amount of no less than \$9,100,000.00. RSG denied liability for all of the claims and damages alleged by CITY.

D. Following a period of due diligence and formal discovery, it was determined that RSG was insured by National Union Fire Insurance Company of Pittsburgh, PA under Miscellaneous Professional Liability Policy No. 042923310 (the "National Union Policy") with aggregate policy limits of \$2,000,000.00 reduced by claims expenses. The legal fees and costs incurred by RSG in defending the Arbitration Proceedings, have been paid from the proceeds of the National Union Policy, thereby reducing the available policy limits. That diligence and discovery by CITY revealed that it is in the best interest of CITY to settle and resolve the dispute on the terms contained herein.

E. During the pendency of the Arbitration Proceedings, the Parties engaged in two lengthy negotiations conducted at two mediation sessions over many months. The Parties have agreed to settle the disputes between them subject to the terms and conditions set forth in the agreement.

NOW THEREFORE and in consideration of the foregoing facts and the mutual covenants, conditions, promises and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. AGREEMENT:

1.1 Settlement Payment:

CITY shall be paid the balance of the \$2,000,000 policy limits in the National Union Policy that remain after payment has been made of all legal fees and costs incurred by RSG in connection with the defense and settlement of the Arbitration Proceedings. Payment shall be made to CITY within 45 days after signature of this agreement by all Parties, or within 14 days after all governmental approvals to this settlement agreement have been procured, whichever event occurs last. The amount of the settlement proceeds is presently estimated to be slightly more than \$1,830,000, but the final amount of the settlement proceeds will be confirmed by RSG within 10 days after signature of this agreement. RSG shall, if requested, provide satisfactory proof of the legal fees and costs incurred in connection with the defense of the arbitration proceedings, but shall not be required to waive the attorney-client privilege with respect to the contents of its attorneys' invoices.

**1.2 Conditional Settlement:**

This settlement is conditional upon approval of all of its terms and conditions by all necessary governmental bodies or agencies, including, but not limited to, CITY, the Oversight Board, and the California Department of Finance.

**1.3 Dismissal of the Arbitration with Prejudice:**

The Parties agree that upon payment of the settlement proceeds, CITY shall immediately dismiss the arbitration proceedings against RSG with prejudice.

**1.4 Costs of Litigation:**

It is further agreed that the Parties to this agreement shall assume and bear their own costs and attorneys' fees as a result of, or in connection with, the arbitration and this settlement agreement.

**2. MUTUAL RELEASE PROVISIONS:**

**2.1 CITY'S Release of RSG:**

In consideration respectively of the agreements referred to in Section 1 hereof, CITY does hereby forever release and discharge RSG and any and all of its parent companies, affiliates, subsidiaries, agents, heirs, attorneys, servants, employees, predecessors, successors, assigns, and assignors, and its insurers and reinsurers, from any and all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, other than as may arise out of or relate to the breach of this settlement agreement by RSG.

**2.2 RSG Release of CITY:**

In consideration, respectively, of the agreements referred to in Section 1 hereof, RSG does hereby forever release and discharge CITY, and all of its agents, heirs,



attorneys, servants, employees, predecessors, successors, assigns, and assignors, from any and all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, other than as may arise out of or relate to the breach of this settlement agreement by CITY.

**2.3 Waiver of Civil Code Section 1542:**

It is the intention of the Parties that the foregoing mutual releases shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected herein above specified to be so barred; in furtherance of this intention the parties expressly waive any and all rights and benefits conferred upon them by provisions of Section 1542 of the California Civil Code, which are as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was separately bargained for. The Parties expressly consent that this release shall give the same full force and effect to unknown and unsuspected claims, demands, and causes of action, if any, as to those terms and provisions relating to claims, demands, and causes of action herein above specified.

3. MISCELLANEOUS:

3.1 Compromise:

The Parties acknowledge that this Agreement constitutes a compromise and settlement of disputed claims and nothing in this Agreement is or shall be treated, or construed or deemed as an admission by any Party of any liability or fault.

3.2 Further Assurances:

The Parties hereby agree to execute such other documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement.

3.3 Law:

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.

3.4 Benefit and Burden:

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

3.5 Waiver and Amendment:

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended or modified only by a written agreement executed by all of the Parties.

3.6 Counterparts:

This Agreement may be executed in counterparts by the Parties and will become effective and binding upon the Parties only at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all the Parties, notwithstanding that all Parties are

not signatory to the original or the same counterpart. Each of the Parties shall sign a sufficient number of counterparts so that each Party will receive a fully executed original of this Agreement. The Parties agree that a facsimile signature shall bear the same force and effect as an original signature, thus enabling the Parties to expeditiously obtain signatures of all Parties and their counsel. In the event, however, that a facsimile signature is used by any Party, that Party shall ensure that all other Parties receive the original document bearing that Party's original signature within five (5) days.

### 3.7 Gender and Tense:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine, feminine, and neuter genders shall be deemed to include the other. The term "person" shall include corporation, firm, joint venture, partnership, trust, or estate.

### 3.8 Entire Agreement:

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, fully supersedes all prior understandings, stipulations, representations, warranties, and agreements between the Parties, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the Parties hereto.

### 3.9 Captions and Interpretation:

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against any Party because that Party or its legal representative drafted such provision.

**3.10 Independent Advice of Counsel:**

The Parties, and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by any other Party or by any person representing such other Party.

**3.11 Voluntary Agreement:**

The Parties, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof and that they sign the same freely and voluntarily.

**3.12 Authority to Execute Agreement:**

CITY and RSG and each of them, each warrant and represent that the individual persons executing this agreement are duly authorized to execute this agreement on behalf of the respective parties and in their respective capacities as indicated below.

**3.13 Assignment:**

Each of the parties hereby warrants, represents and agrees that it is the sole and lawful owner of all right, title, and interest in and to all of the respective claims which are referenced in the releases set forth above and they have not hereto voluntarily, by operation of law or otherwise, assigned or transferred or purported to assign or transfer to any person whomsoever, any such claims or any part or portion thereof. Each of the parties agree to indemnify and hold each of the other parties, harmless from any claim, demand, damage, liability, action, or cause of action, based on or connected with or arising in any manner out of any such assignment or transfer.

**3.14 Incorporation of Recitals:**

The Recitals to this Settlement Agreement are hereby incorporated into this Settlement Agreement by this reference.

**3.15 Further Assurances.**

All Parties agree to cooperate fully and execute any and all supplementary documents and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year written below.

**CLAIMANTS:**

Dated: May \_\_\_\_, 2015

**CITY OF NATIONAL CITY**

By \_\_\_\_\_

Its \_\_\_\_\_

**RESPONDENT:**

Dated: May 18, 2015

**ROSENOW SPEVACEK GROUP, INC.**

By 

Its President

APPROVED AS TO FORM:


Dated: May \_\_\_\_, 2015

MAZZARELLA & MAZZARELLA, LLP

By: \_\_\_\_\_  
Daral B. Mazzarella  
Attorney for Claimant CITY OF NATIONAL  
CITY

Dated: May 28, 2015

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:  \_\_\_\_\_  
Ernest Slome  
Attorney for Respondent ROSENOW  
SPEVACEK GROUP, INC.

RESOLUTION NO. 2015 – 08

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE COMMUNITY DEVELOPMENT COMMISSION  
AS THE NATIONAL CITY REDEVELOPMENT AGENCY  
AUTHORIZING THE CHAIRMAN TO EXECUTE A SETTLEMENT AGREEMENT  
BETWEEN THE SUCCESSOR AGENCY AND ROSENOW SPEVACEK GROUP, INC.,  
TO RESOLVE PENDING ARBITRATION

WHEREAS, On February 20, 2007, the now dissolved Community Development Commission of the City of National City as the National City Redevelopment Agency (“CDC”) entered into an Agreement with Rosenow Spevacek Group, Inc. (RSG) for the CDC’s 2007 Redevelopment Plan Amendment; and

WHEREAS, the 2007 Redevelopment Plan Amendment was prepared by RSG and eventually adopted by the CDC in July of 2007; and

WHEREAS, on or about September 2007, the Community Youth Athletic Center initiated a legal challenge against the 2007 Redevelopment Plan Amendment (the “CYAC Matter”), a reverse validation challenge to the 2007 Redevelopment Plan Amendment, incorporating alleged violations of the California Public Records Act, due process of law, and unconstitutional takings; and

WHEREAS, the CYAC Matter was dismissed, appealed, remanded, tried, appealed, and remanded over the years between 2007 and 2015; and

WHEREAS, during this time frame, the District Court of Appeal ultimately affirmed the invalidation of the 2007 Redevelopment Plan Amendment, and found a violation of the California Public Records Act based upon records not being furnished by RSG for disclosure; and

WHEREAS, In April 2015, the trial court entered judgment in the CYAC matter, awarding fees in the amount of \$2,016,249.87; and

WHEREAS, in or about 2011, the City and CDC commenced arbitration proceedings seeking damages against RSG arising out of work performed by RSG pursuant to its contract with the CDC (the “Arbitration Proceedings”); and

WHEREAS, during the pendency of the Arbitration Proceedings, the parties engaged in two lengthy negotiations conducted at two mediation sessions over many months; and

WHEREAS, as a settlement of the Arbitration Proceedings (“Settlement”), RSG has agreed to pay the City and CDC the balance of their \$2,000,000 policy limits that remain after payment has been made of all legal fees and costs incurred by RSG in connection with the defense and settlement of the Arbitration Proceedings, currently estimated at about \$1.8M; and

WHEREAS, on June 17, 2015, the Oversight Board met, and considered the Settlement as it was approved by the Successor Agency to the CDC ("Successor Agency") on June 16, 2015, and recommended for approval by staff, along with all evidence presented, both in favor and against the Settlement, if any; and

WHEREAS, approval of the Settlement requires approval of the Oversight Board of the Successor Agency and DOF approval before it becomes final.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency as follows:

**Section 1.** The foregoing recitals are true and correct, and are a substantive part of this Resolution.

**Section 2.** The Oversight Board has reviewed and hereby approves the Settlement Agreement between the Successor Agency to the Community Development Commission as the National City Redevelopment Agency and Rosenow Spevacek Group, Inc., to resolve the pending Arbitration Proceedings, a true and correct copy of said Settlement Agreement to be retained as a public record by the City Clerk of the City of National City.

**Section 3.** The Chairman of the Successor Agency, or his designee, is hereby authorized and directed to execute the Settlement Agreement and take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board;

**Section 4.** The Oversight Board concurs with the Successor Agency's determination that approval of this Resolution does not represent a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

**Section 5.** The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

**Section 6.** Pursuant to California Health and Safety Code Section 34179(h), the State of California Department of Finance may review Oversight Board action; therefore, this Resolution shall be effective on the date five (5) business days after its adoption, absent and pending any request for review by the State of California Department of Finance.

--- SIGNATURE PAGE TO FOLLOW ---



Resolution No. 2015 – 08  
Page Three  
June 17, 2015

PASSED and ADOPTED this 17<sup>th</sup> day of June, 2015.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

\_\_\_\_\_  
Ron Morrison, Chairman

\_\_\_\_\_  
Brad Raulston, Executive Director  
Secretary to the Oversight Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Oversight Board Counsel  
Edward Z. Kotkin, Esq.  
Law Offices of Edward Z. Kotkin