

## **ITEM 2**

### **OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY**

**DATE ISSUED:** 9/11/2012

**SUBJECT:**

Adoption of a Resolution to Approve a Termination and Surrender of Lease Agreement related to a Successor Agency Office Space Lease, in City Heights, with Price Charities.

**CONTACT/PHONE NUMBER:** David Graham/236-6980

**DESCRIPTIVE SUMMARY OF ITEM:**

Adoption of a Resolution to Approve a Termination and Surrender of Lease Agreement related to a Successor Agency Office Space Lease at 4305 University Avenue, Suite 535, in City Heights, with Price Charities.

**STAFF RECOMMENDATION:**

Approve proposed action.

**DISCUSSION:**

Background

In May 2003, the former Redevelopment Agency (Tenant) entered into a ten (10) year lease with San Diego Revitalization Corporation, currently Price Charities, (Landlord) for a 1,441 square foot first floor office within the City Heights Center, an office building located at 4305 University Avenue, within the Mid-City community of City Heights. The purpose of the lease was to provide field office space for Redevelopment Agency staff and for the Mid-City Community Service Center for the City Heights community. The lease commenced on April 1, 2004 with a term of ten (10) years, with two five-year extensions. The lease is scheduled to terminate in March 2014. The lease allows the Tenant to sublease the office space, with permission from the Landlord, but the lease does not include an early termination provision.

Due to budget constraints, the Mid-City Community Service Center, (along with other Community Service Centers) was closed in June 2005. The subject lease was amended, by the Tenant and the Landlord in August 2006, to allow the former Redevelopment Agency staff to

move to a smaller suite consisting of 1,048 square feet located on the fifth floor. The other terms and conditions of the lease remained the same.

Currently, the Successor Agency to the former Redevelopment Agency pays approximately \$3,660 per month, (including base rent, parking, common area maintenance and utility charges). The total obligation remaining to be paid under the lease is \$72,486.00, October 2012 – March 2014. Similar to other commercial leases in privately owned buildings, the lease is managed by the City's Real Estate Assets Department (READ), on behalf of the Successor Agency. The lease is identified on the Recognized Obligation Payment Schedules (ROPS) #1 and #2 and listed most recently in ROPS #3 (January – June 2013), as Item #141.

With the dissolution and winding down of the former Redevelopment Agency, the office space is no longer needed by the Successor Agency, and can be terminated as an enforceable obligation. Although the lease agreement does not have a termination provision, Price Charities, in the interest of mutual cooperation, has agreed to terminate the lease. Through several months of marketing, Price Charities has identified a new/suitable tenant, San Diego Organizing Project (SDOP) to occupy the space. SDOP is a non-profit faith based community organization established to address local and community issues.

The attached Termination and Surrender of Lease Agreement ("Agreement") has been prepared and is requested to be approved by the Oversight Board. In consideration for being released from any future liability or obligations under the lease, the Successor Agency is agreeing and Price Charities is accepting a lump sum termination payment of \$27,603.12 for the shortfall in rental payments with SDOP which is less than the payments that would otherwise have been made by the Successor Agency through the remaining term of its lease (March 2014). This lump sum payment recognizes that the landlord is losing a high value tenant and is doing so voluntarily. In addition, the Successor Agency would pay for any remaining utility and common area maintenance charges for a portion of August 2012 and the balance of September 30, 2012, estimated at \$300.

### Conclusion

The Oversight Board is respectively requested to approve the Agreement. Approving the Agreement will save the Successor Agency \$44,882.88 over the remaining term of the obligation and those savings can then be distributed to other taxing entities on a pro-rata basis. Finally,

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with this action, and approval by the State Department of Finance, Item #141 on ROPS #3 will then be removed from future ROPS.

David Graham  
Office of the Mayor

Jay Goldstone  
Chief Operating Officer

Attachment: Termination and Surrender of Lease Agreement

## TERMINATION AND SURRENDER OF LEASE AGREEMENT

THIS TERMINATION AND SURRENDER OF LEASE AGREEMENT (“Agreement”) is entered into as of the \_\_\_\_\_ day of September, 2012, by and between Price Charities, a California nonprofit, public benefit corporation, hereinafter referred to as “Landlord”, and 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 (the “Successor Agency”), hereinafter referred to as “Tenant.”

### RECITALS

A. Landlord and Tenant entered into a written Lease Agreement dated May 27, 2003, amended by that First Amendment to Office Lease Agreement dated August 18, 2006, for the lease of certain office space currently identified as “Suite 535,” hereinafter referred to as the “Demised Premises,” in what is commonly referred to as “City Heights Center,” an office building located at 4305 University Avenue, San Diego, CA 92105 (“the Lease”).

B. Tenant’s predecessor agency, the former Redevelopment Agency of the City of San Diego, has been dissolved and therefore no longer requires the use of the Demised Premises for the balance of the term of the Lease.

C. In the interest of mutual cooperation, and to potentially save Tenant a portion of the balance of the liability under the Lease, Landlord has identified a substitute tenant, who is willing to replace Tenant for a period that covers the balance of the term of the Lease at a rental rate of \$1.75 per rentable square foot per month and for some additional tenant improvements to the Demised Premises at Landlord’s expense. In consideration for being released from any future liability under the Lease, Tenant is agreeing to provide, and Landlord’s willing to accept, a lump sum payment for the approximate shortfall in rental payments which is anticipated based on the terms of the new lease agreement with the substitute tenant and which is substantially less than the total liability of Tenant under the Lease.

D. By this Agreement, Landlord and Tenant desire to terminate the Lease, and Tenant desires to surrender the Demised Premises to Landlord, who desires to accept said surrender and to release Tenant from its obligations under the Lease, subject to the terms, covenants and conditions set forth below.

### TERMS

NOW, THEREFORE, for and in consideration of the Demised Premises and the mutual promises contained herein, the parties hereto agree as follows:

1. Defined Terms. All capitalized terms utilized in this Agreement, unless otherwise provided for herein, shall have the meanings ascribed to them in the Lease.

2. Termination. Landlord and Tenant hereby agree to terminate the Lease, and Landlord shall release Tenant from its obligations thereunder, as of the close of the business day of September 30, 2012, which is hereinafter referred to as the "Effective Date." Such termination shall be contingent upon Tenant's timely satisfaction, in full, of each of the following conditions:

a. Payment of Rent. Tenant has made full payment to Landlord of all Rent and other charges, including utilities and Tenant's Share of Direct Expenses, as estimated in the detailed accounting in the attached Schedule A, due and owing under the Lease up to and including the Effective Date.

b. Payment of Utilities and Direct Expenses. Tenant shall make full payment to Landlord of all utility charges and Direct Expenses incurred by Tenant, up to and including the Effective Date, within ten (10) business days of receipt of invoice even if the invoice is received after the Effective Date. All amounts based on Direct Expenses as incurred by Tenant are listed in the attached Schedule A. To the extent certain utility charges are unknown until receipt of invoice; such items are identified on Schedule A and provide the estimated amount to be charged.

c. Payment of Termination Fee. Tenant shall make full payment of the negotiated sum in the amount of Twenty-Seven Thousand, Six Hundred and Three Dollars and 12/100 (\$27,603.12) no later than October 1, 2012 ("Termination Fee").

3. Surrender of the Demised Premises. Tenant hereby surrenders and sets over the Demised Premises unto Landlord in such condition as required under the Lease, who hereby accepts said surrender and Demised Premises, as of the Effective Date, provided that Tenant shall do all of the following on or before the Effective Date:

a. Removal by Tenant from the Demised Premises at its expense of any and all of its trade fixtures, signs, equipment and other movable personal property.

b. Repair by Tenant of any damage occasioned to the Demised Premises by reason of its removal of any such trade fixtures, signs, equipment and other movable personal property.

4. Lease Contingency. Tenant and Landlord acknowledge and agree that this Agreement is contingent upon Landlord and the San Diego Organizing Project entering into an agreement to lease office space in Suite 535 at City Heights Center (the "New Lease") and the New Lease is contingent upon this Agreement being fully executed.

5. Release. Upon the Effective Date, provided that all obligations, contingencies, and conditions of this Agreement are fully executed, Tenant and Landlord hereby generally release and discharge the other and all of its officers, directors, shareholders, agents, representatives, employees, subsidiaries, and attorneys, both present and past, of and from any and all claims, debts, liabilities, obligations, and causes of action of any kind or nature, whether known or unknown, based on, arising out of, or connected with, either directly or indirectly, any term, provision, matter, fact, event or occurrence related to or

contained in the Lease, or to any landlord/tenant relationship between Tenant and Landlord. This general release shall be governed by the laws of the State of California.

Tenant acknowledges and agrees that foregoing general release shall apply to all claims of every nature and kind whatsoever, and hereby releases any and all rights under Section 1542 of the California Civil Code, which Tenant has or may have against Landlord or its officers, directors, shareholders, agents, representatives, employees, subsidiaries, and attorneys. The California Civil Code Section 1542 provides 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.

Tenant understands that Section 1542 gives Tenant the right not to release existing claims of which they are not now aware, unless they voluntarily choose to waive this right. Having been so apprised, Tenant nevertheless hereby voluntarily elects to, and does waive the rights described in Section 1542, and elects to assume all risks for claims that exist in their favor, known or unknown, which arise or are related to the Demised Premises.

6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

7. Submission of Agreement. Landlord's submission of this Agreement to Tenant for examination does not constitute an offer, or an option, by Landlord to terminate the Lease for the Demised Premises, and this Agreement shall be effective only upon its mutual execution and delivery by Landlord and Tenant.

8. Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Agreement, and that this Agreement supersedes and cancels any and all previous negotiations, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret, construe, supplement or contradict this Agreement. All negotiations and oral agreements acceptable to the parties have been merged into and are included in this Agreement.

9. Attorney Fees. If at any time after the Effective Date of this Agreement, either Landlord or Tenant institute any action or proceeding against the other relating to the provision of

this Agreement or any default hereunder, the nonprevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorney fees and all costs and disbursements incurred therein by the prevailing party. Subject to the provisions of local law, the prevailing party shall recover all such fees or costs in the action or proceeding itself without the necessity for a cross-action by the prevailing party.

10. Warranty of Authority. Tenant and Landlord each warrant and represent that the party signing this Agreement on behalf of each has authority to enter into this Agreement and to bind Tenant and Landlord, respectively, to the terms, covenants, and conditions contained herein. Each party shall deliver to the other, upon request, documents reasonably requested by the other evidencing such authority.

11. Counterparts. To facilitate execution, this Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto covenant and agree that, for purposes of facilitating the execution of this Agreement, a facsimile or electronic delivery signature shall be deemed to be an original signature. Notwithstanding the foregoing, originals of this Agreement shall be delivered from each signing party within fourteen (14) days of execution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LANDLORD:

Price Charities, a California nonprofit  
Public Benefit Corporation

BY: \_\_\_\_\_

TENANT:

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

BY: \_\_\_\_\_

Jay Goldstone  
Chief Operating Officer

*Approved as to form:*

JAN I. GOLDSMITH, City Attorney

BY: \_\_\_\_\_  
Daphne Z. Skogen, Deputy City Attorney

## Schedule A

### Projected Costs through September 30, 2012

Electric charges	7/11/12-8/09/12	\$110.55	
Electric charges	8/10/12-9/09/12	105.00	*Estimate
Electric charges	9/10/12-9/30/12	73.50	*Estimate
CAM Reconciliation (credit)	1/01/12-9/30/12	(27.00)	*Estimate
Total		<u>\$262.05</u>	

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-24

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE PROPOSED TERMINATION AND SURRENDER OF LEASE AGREEMENT WITH PRICE CHARITIES RELATED TO A SUCCESSOR AGENCY OFFICE SPACE LEASE LOCATED AT 4305 UNIVERSITY AVENUE IN CITY HEIGHTS

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), 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 winding down the Former RDA's affairs in accordance with AB 26, enacted on June 28, 2011, and Assembly Bill 1484 (AB 1484), enacted on June 27, 2012 (collectively, the Dissolution Laws); and

WHEREAS, in May 2003, the Former RDA (Tenant) entered into an Office Lease Agreement (Lease Agreement) with Urban Village Commercial, LLC, currently Price Charities (Landlord), for office space within the City Heights Center, an office building located at 4305 University Avenue; and

WHEREAS, the lease commenced on April 1, 2004 for a term of ten (10) years with two five-year extensions and was entered for the purpose of leasing field office space for Former RDA staff and for the Mid-City Community Service Center for the City Heights community; and

WHEREAS, the Mid-City Community Service Center was closed in June 2005 due to budget constraints; and

WHEREAS, the Lease Agreement was amended by the First Amendment to Office Lease Agreement (Lease Amendment) by the Former RDA and Price Charities in August 2006 to allow the Former RDA staff to move to a smaller suite within the City Heights Center; and

WHEREAS, the office space identified in the Lease Amendment is no longer needed by the Successor Agency as a result of the dissolution and winding down of the Former RDA pursuant to the Dissolution Laws; and

WHEREAS, the Lease Agreement and Lease Amendment do not have applicable termination provisions, but Price Charities, in the interest of mutual cooperation, has agreed to terminate the lease; and

WHEREAS, Price Charities has identified a new/suitable tenant, to occupy the space; and

WHEREAS, the Successor Agency and Price Charities propose to execute the Termination and Surrender of Lease Agreement (Termination Agreement), a copy of which is attached to the staff report accompanying this item, wherein Price Charities agrees to accept a lump sum termination payment of \$27,603.12 plus approximately \$300.00 for utilities charges and direct expenses currently owed under the Lease Agreement and Lease Amendment terms, and the Successor Agency is to be released from any future liability or obligations under the Lease Agreement and Lease Amendment; and

WHEREAS, the lump sum termination payment is an amount equivalent to the difference between rental payments Price Charities would have received from the Successor Agency under the current Lease Amendment and the rental payments to be received from the new lessee; and

WHEREAS, approval of the Termination Agreement will save Successor Agency \$44,882.88 over the remaining term of the obligation under the Lease Amendment and those savings can then be distributed to other taxing entities on a pro-rata basis; and

WHEREAS, the termination payment is less than the amount owed for the balance of the Lease Amendment term, as identified on the Recognized Obligation Payment Schedules (ROPS) #1 and #2 and listed most recently in ROPS #3 (January – June 2013), as Item #141; and

WHEREAS, with this action, and approval by the State Department of Finance, Item #141 on ROPS #3 will then be removed from future ROPS.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Termination Agreement is hereby approved.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on September \_\_\_\_, 2012.

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Chair, Oversight Board