

STAFF REPORT
OVERSIGHT BOARD
TO THE
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

TO: CHAIR AND MEMBERS OF THE OVERSIGHT BOARD TO THE
IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR
AGENCY

FROM: GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR
GREG WADE, DEPUTY DIRECTOR 

MEETING DATE: SEPTEMBER 12, 2012

SUBJECT: OVERSIGHT BOARD ADOPTION OF RESOLUTION NO. OB-
12-10 APPROVING THE TERMS OF THE DISPOSITION AND
DEVELOPMENT AGREEMENT (DDA) BETWEEN THE CITY OF
IMPERIAL BEACH (CITY) AND SADBERRY-PALM AVENUE
LLC AND APPROVING THE TRANSFER OF OWNERSHIP OF
REAL PROPERTY, THE RETENTION AND OWNERSHIP OF
CERTAIN PUBLIC IMPROVEMENTS, AND THE TRANSFER OF
RESIDUAL PROCEEDS FROM THE SALE OF REAL
PROPERTY

BACKGROUND:

Beginning in December 2004, the Imperial Beach Redevelopment Agency (the "Former Agency") issued the first of three Requests for Proposals/Qualifications (RFP/Q) to solicit development proposals for the former Miracle Shopping Center and North Island Credit Union properties located at the southwest corner of 9th Street and Palm Avenue (the "Property"). For various reasons, neither an Owner Participation nor a Disposition and Development Agreement were executed as a result of the first two RFQ/P's issued. In February of 2009, the Former Agency issued a third RFP/Q to solicit development proposals for the Property. Of the four responses to this RFQ/P, the Former Agency selected Sudberry Properties, Inc. with whom to negotiate a Disposition and Development Agreement for development of the Property.

On September 2, 2009, the Former Agency approved an Exclusive Negotiation Agreement (ENA) with Sudberry Development, Inc. for the development of the Property. On February 16, 2011, the City of Imperial Beach (the "City") and the Former Agency entered into a Cooperation Agreement within which were identified several projects to be carried out by the City on behalf of the Former Agency. One of the projects identified in the Cooperation Agreement are "Highway 75 Improvements" which call for the reconfiguration of the Palm Avenue/State Route 75 right-of-way and other related public improvements adjacent to and associated with development of the Property. On March 9, 2011, the Former Agency authorized the transfer of portions of the Property constituting approximately 3.9 acres and referenced by Assessor Parcel Numbers 626-250-03 and 626-250-04 Thru 06 from the Former Agency to the City and the transfer of certain tax-exempt bond proceeds of the Former Agency to the City for development of the Project (defined below).

On June 28, 2011, AB x1 26 (the "Dissolution Act") was signed into law by the Governor of California which called for the dissolution of redevelopment agencies throughout the state and established the procedures by which this was to be accomplished. On December 29, 2011, the California State Supreme Court largely upheld the Dissolution Act as constitutional and reformed and extended certain dates, by which certain dissolution actions were to occur under the Dissolution Act, by an additional four months. As a result of the Supreme Court's decision, and on February 1, 2012, all California redevelopment agencies were dissolved, including the Former Agency and successor agencies to the former redevelopment agencies were established and tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the affairs of the former redevelopment agencies.

On December 14, 2011, the City approved a Disposition and Development Agreement (DDA) with Sudberry-Palm Avenue LLC (Sudberry) for a proposed 46,200 square foot commercial/retail town center shopping development on the Property, including the construction of certain public improvements (the "Project"), along with the project entitlements and a Mitigated Negative Declaration (MND) associated with the Project (See Attachment 2, which contains the DDA).

On January 5, 2012, as part of the wind-down process enacted by the Dissolution Act, the City Council adopted Resolution No. 2012-7136 electing for the City to serve as the successor agency to the Former Agency (the "Successor Agency") upon the dissolution of the Former Agency under the Dissolution Act. As also required by the Dissolution Act, a seven-member Oversight Board, consisting of representatives of the affected taxing entities, a representative of the City of Imperial Beach and a representative of the employees of the Former Agency, was created to oversee the activities of the Successor Agency. It is the duty of the Successor Agency to wind down the fiscal and business activities of the Former Agency and it is the responsibility of the Oversight Board to oversee the activities and actions of the Successor Agency.

On February 1, 2012, pursuant to the Dissolution Act, the Former Agency was effectively dissolved by operation of law and the Successor Agency assumed the duties of dissolving and/or winding down the activities of the Former Agency. Since that time, the Successor Agency and its staff have been working to ensure that the wind-down process is accomplished in compliance with the Dissolution Act and with any other pertinent guidelines and/or legislation adopted by the State. On March 15, 2012, the City and Sudberry mutually agreed to extend certain dates and deadlines by which certain obligations are to be performed by the parties as set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) by an additional 9 months (See Attachment 3).

On June 27, 2012, the State Legislature passed and the Governor signed Assembly Bill No. 1484 ("AB 1484", Chapter 26, Statutes 2012) as a trailer bill for the Fiscal Year 2012-2013 State budget package. Although the primary purpose of AB 1484 is to make technical and substantive amendments to the Dissolution Act based on issues that have arisen in the implementation of the Dissolution Act, AB 1484 also imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind-down process of former redevelopment agencies (remaining references in this staff report to the "Dissolution Act" means Assembly Bill x1 26 as amended by AB 1484).

DISCUSSION:

Pursuant to Section 34177(e) of the Dissolution Act, the Successor Agency is required to dispose of assets and property of the Former Agency as directed by the Oversight Board,

provided, however, that the Oversight Board may instead direct the Successor Agency to transfer ownership of certain assets pursuant to Section 34181(a) of the Dissolution Act. In this regard, Section 34181(a) of the Dissolution Act provides that the Oversight Board is required to direct the Successor Agency to dispose of assets and property of the Former Agency; provided, however, the Oversight Board may direct the Successor Agency to transfer ownership of certain assets constructed and used for governmental purposes to the appropriate public jurisdiction pursuant to existing agreements relating to the construction or use of such assets. The disposal of assets is to be done expeditiously and in a manner aimed at maximizing value. Section 34181(a) of the Dissolution Act provides that any compensation to be provided to the Successor Agency for the transfer of an asset shall be governed by the agreements relating to the construction or use of that asset. Section 34177(e) of the Dissolution Act provides that proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the Former Agency, as determined by the Oversight Board, shall be transferred to the County Auditor-Controller for distribution as property tax proceeds under Section 34188 of the Dissolution Act.

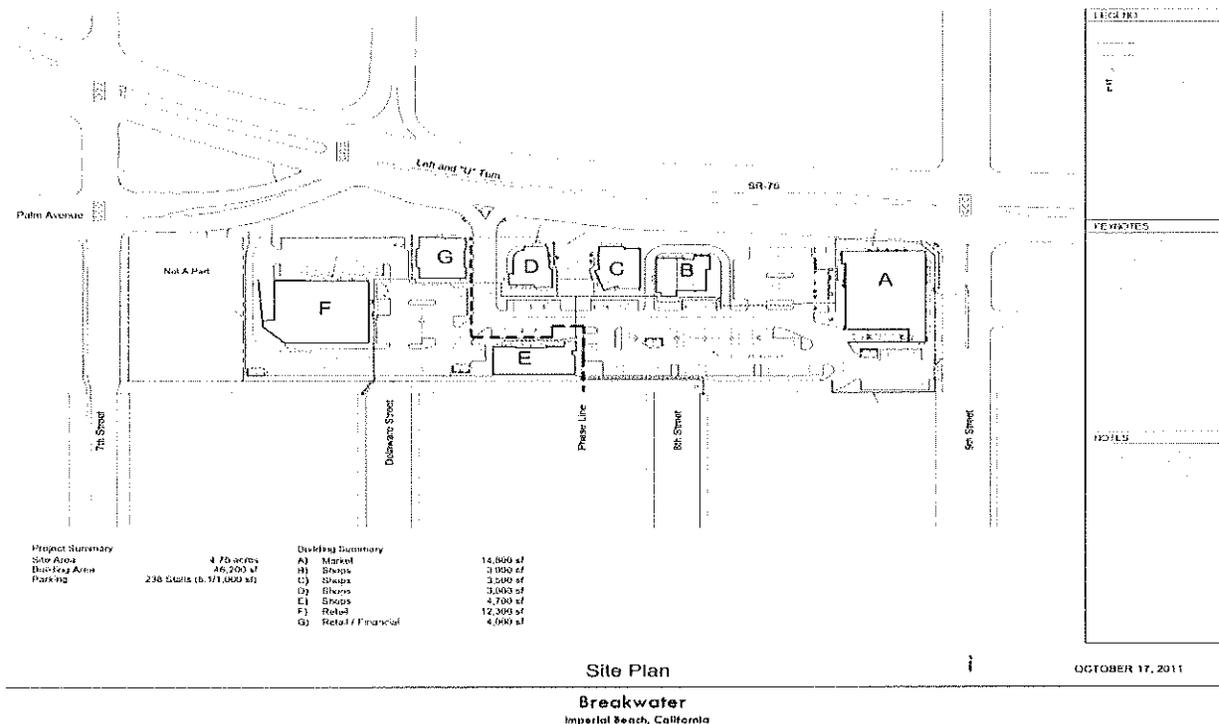
Section 34191.3 of the Dissolution Act suspends both the mandatory obligation of the Successor Agency to expeditiously dispose of assets and property of the Former Agency and the mandatory obligation of the Oversight Board to direct the Successor Agency to expeditiously dispose of such assets and property, except in connection with transfers of assets and property for governmental use, until the earlier of the Department of Finance's approval of a long-range property management plan or January 1, 2015. Section 34191.3 does not, however, suspend the authority of the Successor Agency to voluntarily dispose of assets and property of the Former Agency upon the approval of the Oversight Board and the authority of the Oversight Board to voluntarily approve such disposition. Therefore, staff is now seeking the Oversight Board's approval of, among other actions, (i) the terms of the DDA between the City and Sudberry, (ii) the sale and conveyance of the Property to Sudberry pursuant to the terms of the DDA for development of the Project; (iii) the City's retention and ownership of certain public improvements constructed as part of the Project; and (iv) the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Property to Sudberry for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Section 34177(e) of the Dissolution Act.

On August 1, 2012, the Successor Agency adopted Resolution No. SA-12-15 approving, among other actions: (i) the terms of the DDA between the City and Sudberry, (ii) the sale and conveyance of the Property to Sudberry pursuant to the terms of the DDA for development of the Project; (iii) the City's retention and ownership of certain public improvements constructed as part of the Project; and (iv) the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Property to Sudberry for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Section 34177(e) of the Dissolution Act (See Attachment 4).

Also on August 1, 2012, the City Council adopted Resolution No. 2012-7243 approving, subject to conditions precedent, the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Property to Sudberry under the DDA for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Section 34177(e) of the Dissolution Act (See Attachment 5).

As discussed above, pursuant to the Dissolution Act, the disposition of Former Agency assets and properties is to be done expeditiously and in a manner aimed at maximizing value. The following overview of the Project and terms of the DDA substantially supports and evidences the significant value of the Project and the City's disposition of Former Agency assets for development of the Project pursuant to the DDA.

The Property consists of two separate components, designated in the DDA as "Property 1" (Parcels A, B, C & D) and "Property 2" (Parcels E, F, & G) which are illustrated as follows:



Terms of the DDA:

The terms and conditions of the DDA anticipate that the entire Property would be conveyed by the City to Sudberry at one time. The DDA also expects but does not require that the Property will be developed in two phases, each with separate and distinct conditions precedent to closing and the associated release of certain interests and rights of the City. Phase 1 of the Project would include development of Property 1 (Parcels A, B, C and D) and would consist of the following (capitalized terms are as defined in the DDA):

- The construction of the Public Improvements (except the Undergrounding Utilities, Alley Improvements and new traffic signal that are deferred until Phase 2);
- The construction of all Horizontal Improvements on Property 1;
- The construction of all Building Pads and related improvements on Property 1; and
- The construction of the Vertical Improvements to be constructed on Property 1, with related on-site utilities, improvements, landscaping, lighting, parking and driveways.

Phase 2 of the Project would include development of Property 2 (Parcels E, F, and G) and would consist of the following:

- The construction of any of the Public Improvements deferred by Developer until Phase 2;
- The construction of any remaining Horizontal Improvements on Property 2; and

- The preparation of Building Pads and related improvements on Parcels E, F and G and the buildings on Parcel E (if Sudberry elects to construct the building on Parcel E), Parcel G (if Sudberry elects to construct the building on Parcel G) and Parcel F (if Sudberry elects to construct the building on Parcel F – it being acknowledged that such building may be constructed either by Sudberry or the Approved Parcel F Assignee) and related on-site utilities, improvements, landscaping, lighting, parking and driveways.

Please note, however, that Sudberry has indicated a desire to proceed with development of the Property in one complete phase and that nothing in the DDA would prohibit this from occurring.

Pursuant to Section 33433 of the California Community Redevelopment Law, Keyser Marston and Associates (KMA) prepared a Summary Report dated November 2011 for the conveyance of the Property under the terms of the DDA. The Summary Report determined and the DDA acknowledges that the public funds of the Former Agency proposed to be expended by the City to acquire the Property, relocate its former tenants and demolish the existing structures, exceed the Purchase Price to be paid by Sudberry for the Property. The difference between the Purchase Price and funds expended, together with the funds allocated for construction of the public improvements associated with the Project, constitutes a "Public Agency Subsidy". The Public Agency Subsidy is in consideration for the following:

- The construction by Sudberry and/or its Assignees of an approximately 46,200-square-foot retail/commercial center on the Property in accordance with the DDA and permits issued by the City;
- Sudberry's satisfactory construction of the proposed Public Improvements as detailed below; and
- Sudberry's and/or Assignee's maintenance and operation of the Project in accordance with the Grant Deeds for the Property and the Agreements Containing Covenants to be recorded concurrently with the conveyance of the Property to Sudberry.

The following are the essential terms of the DDA:

- The City will sell the Property to Sudberry for \$1.00 and Sudberry will construct a 46,200-square-foot, privately-owned retail center containing 7 retail/commercial buildings, and public improvements, including intersection improvements at Delaware, Palm and State Route 75 and other improvements (public improvements to be paid for by the City with approximately \$2.2 million of Former Agency tax-exempt bond funds, some of which has already been spent by the City to start preparing plans).
- As a component of the Purchase Price for the Property, the City will receive 1.5% of the gross sales price from the first arm's-length sale of each portion of the Property by Sudberry (defined in the DDA as the Participation Component), in any number of transactions over any period of time, if any, excluding the sale of Parcel A and Parcel F upon certain conditions including, without limitation, if Sudberry conveys these parcels for development by an end user in accordance with the terms of the DDA. However, except as otherwise exempted from the Participation Component, if Sudberry constructs the Vertical Improvements on Parcel F, and subsequently sells Parcel F, the gross sales price from such sale shall be subject to the 1.5 % Participation Component.
- No City general funds are obligated for development of the Project. To the extent that the City has any financial obligation to Sudberry, that financial obligation is limited solely to Former Agency funds including tax allocation bond proceeds as specified in the bond

issuance related documents and that have been pledged and paid to the City by the Former Agency pursuant to the Cooperation Agreement. Accordingly, the City is not committed under the terms of the agreement to expend or commit to expend monies from its general fund to satisfy any of the obligations set forth in the DDA.

- Sudberry has 28 months from execution of the DDA to satisfy the Phase 1 conditions, the close of escrow and start of construction. Sudberry has 33 months from the conveyance date to complete the construction of Phase 1. The City's "right of reverter" in connection with the Property is exercisable as to any uncompleted Parcels if the City terminates DDA for uncured default after close of escrow but before completion of construction.
- Sudberry will assign its rights under the DDA for Parcel A to an end user who will be required to construct and open an approximately 14,800-square-foot grocery or supermarket, in accordance with all DDA requirements.
- The City will have an option to re-purchase Parcels E, F and G for \$1.00 if the Phase 2 Closing does not occur within 51 months of the effective date of the Agreement. The City will remove the Option Agreement secured by Parcels E, F and G when Sudberry meets all conditions precedent to the start of Phase 2. Specifically, prior to the Phase 2 Closing, Sudberry will submit to the City evidence of binding commitments from the Parcel F assignee for the construction and operation of a 5,000- to 15,000-SF retail store, if applicable, and commitments from tenants to lease space in Parcels E and G, if any.
- Subject to the conditions precedent set forth in Section 219.e. of the DDA, the City has agreed to pay to or for the benefit of or reimburse Sudberry for the cost of designing, permitting, constructing and installing certain public improvements described in Section 219.c. of the DDA, not to exceed the amount of \$2.2 million. Prior to the Effective Date of the DDA, the City incurred and disbursed to Project Design Consultants a portion of that amount for the preparation of plans for the subject public improvements, which has been estimated to be \$43,152. Promptly following the mutual execution of a Disbursed Funds Memorandum by the City and Sudberry, the City is required to open a construction escrow account and deposit into the escrow account the sum referenced as the Initial Deposit equal to the amount by which \$200,000 exceeds the previously disbursed funds, plus an additional \$100,000 for Developer's costs with site preparation design work pursuant to the Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work (discussed below). As a condition precedent to the disbursement from escrow of any portion of the Initial Deposit, the City, Sudberry and the escrow agent shall execute a Disbursement Agreement. Thereafter, upon satisfaction of all conditions precedent set forth in Section 219.e. of the DDA, the City shall deposit into the escrow account the balance of the remaining public improvement funds for disbursement in accordance with the Disbursement Agreement. These funds will be used first for the Intersection Improvements at Delaware/Palm/Highway 75. To the extent the Highway 75 Intersection improvements cost less than \$2.2 million; the balance of the \$2.2 million will be disbursed to reimburse Sudberry for a portion of the cost of the other public improvements.

It should be noted that the funds to be used for the public improvements are 2010 Former Agency tax-exempt bond proceeds and that the expenditure of these proceeds toward the Project were included for this purpose in the First Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2012 to June 30, 2012 which was approved by the Successor Agency and the Oversight Board and not disputed by

the State Department of Finance. Additionally, the official Bond Statement and the Certificate Regarding Use of Proceeds associated with that bond issuance specifically identify "Palm Avenue Corridor Improvements" as one of the projects to be carried out with the bond proceeds.

Public Improvements

The Public Improvements associated with the Project consist of the design, permitting, construction and installation of the work reflected on the construction drawings, subject to approval by the City, for the Public Improvements, including without limitation, the following, all of which shall meet all applicable City standards:

- (a) The intersection improvements at Delaware, Palm Avenue/State Route 75 (defined in the DDA as the "Highway 75 Access Improvements") including, without limitation, the following:
 - Removal of existing median and pavement between Palm Avenue/State Route 75 and the Property entrance;
 - Removal of existing curb/gutter, median and pavement along the southern side of Palm Avenue/State Route 75, between 7th Street and State Route 75;
 - Construction of new curb/gutter, pavement and median on Palm Avenue/State Route 75 between 7th Street and State Route 75;
 - Installation of landscaping and irrigation and storm water treatment "garden";
 - Installation of new street lights; and
 - Any other Cal-Trans requirements relating to the foregoing public improvements.
- (b) Moving of traffic signals and interconnection of traffic signals and construction of curbs, gutters, sidewalks and landscaping on Palm Avenue and 9th Street;
- (c) All existing and proposed utilities within the boundary of the Property, or within any public right-of-way abutting the boundary shall be placed underground (conversion) to the reasonable satisfaction of the City Engineer. Sudberry is responsible for complying with the requirements of and making such arrangements with each serving and impacted utility company for the conversion or additional installation of such facilities (defined in the DDA as the "Underground Utilities");
- (d) Removal and replacement of the concrete alley at the south end of the Property to the reasonable satisfaction of the City Engineer, including the adjustment to grade and/or replacement of all utility covers in such alley. The concrete section shall be designed to support the imposed load of fire apparatus to withstand a minimum 95,000 pound vehicle load (defined in the DDA as the "Alley Improvements"); and
- (e) The existing traffic signal pole signaling left turns from Westbound Silver Strand Boulevard to Palm Avenue shall be removed and replaced to the reasonable satisfaction of the City Engineer (defined in the DDA as the "New Traffic Signal").

In addition to the above, the DDA also contemplated as a public improvement the resurfacing and improvement of 9th Street between Palm Avenue and Donax Avenue, as required by the

City as a condition of the approval of the Entitlements (defined in the DDA as the "Ninth Street Improvements"). Shortly before the approval of the DDA on December 14, 2011, the City awarded a contract for the Streets Phase 4/5 project which included the resurfacing of 9th Street south of Palm Avenue/State Route 75 within its scope. Discussions with Sudberry at the time of DDA negotiation led to the inclusion of the requirement in the DDA that Sudberry would be responsible for the resurfacing and improvement of 9th Street between Palm Avenue/State Route 75 and Donax Avenue during construction of the Project. However, the Supreme Court ruling on December 29, 2011, and subsequent dissolution of the Redevelopment Agency on February 1, 2012, raised concerns about the timing and coordination of the improvement of 9th Street. Therefore, the City and Sudberry mutually agreed that the City would include the resurfacing and improvement of 9th Street between Palm Avenue/State Route 75 and Donax Avenue within the Streets Phase 4/5 project and, by execution of a Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work dated August 10, 2012 (MOA), eliminate this requirement from the DDA as a responsibility of Sudberry (See Attachment 6). The 9th Street resurfacing and improvement work is currently under construction and nearing completion as part of the Streets Phase 4/5 project. This resurfacing and infrastructure project and its funding were included on the ROPS for the period of January 1, 2012 to June 30, 2012 and approved by the Successor Agency and Oversight Board and not disputed by the State Department of Finance.

On August 10, 2012, the MOA was executed thereby removing the "Ninth Street Improvements" from the DDA that would have required Sudberry to resurface and improve 9th Street between Palm Avenue/State Route 75 and Donax Avenue. It should be noted, however, that, under the terms of the DDA, all other public improvements on 9th Street (curb, gutter, sidewalk, landscaping, lighting, etc.) will remain the responsibility of Sudberry. The MOA also allows up to \$100,000 of the City's \$2.2 million to be used toward certain site preparation design work costs incurred for preparation of plans for certain on-site improvements relating to the grading of the Property and construction of infrastructure necessary for development of the Property.

The Property is located within the geographical area of the Palm Avenue/Commercial Redevelopment Project (the "Project Area"). The Project complies with and furthers the goals and objectives of the Redevelopment Plan for the Project Area approved and adopted by the City Council of the City on February 6, 1996 by Ordinance No. 96-901, as subsequently amended (the "Redevelopment Plan") and the Project also furthers municipal and other public purposes.

As stated above, in accordance with Section 34181(a) of the Dissolution Act, the Oversight Board has the authority to approve and direct the Successor Agency to transfer ownership to the appropriate public jurisdiction of all assets and property constructed and used for governmental purposes. In this regard, the public improvements that are to be funded pursuant to the DDA and constructed as part of the Project will be publicly-owned by the City when completed. Because of the nature of these public improvements, the City is the most appropriate public jurisdiction to own these public improvements. The public improvements, once completed, will benefit the Project Area by helping to eliminate blight and by serving as a catalyst by providing an incentive for future private development and investment, thereby contributing to the removal of economic blight. Further, the public improvements, once completed, will enhance the public right-of-way and replace and construct public improvements that are currently inadequate or non-existent and provide improved pedestrian access to public and private properties.

As the result of current economic conditions, it would not be feasible to fund the public improvements with any other funds that are or will become available to the City in the foreseeable future except for the funds currently committed to the City by the Former Agency under the Cooperation Agreement. Therefore, no other reasonable means of financing the

public improvements associated with the Project are available to the City or to Sudberry. Further, the use of the tax-exempt bond proceeds toward the uses proposed by the DDA is consistent with the covenants and requirements set forth in the 2010 bond issuance covenants and related documents for the purposes for which the bonds were issued by the Former Agency and for the tax exempt status of said bonds.

As stated above, the funds for these improvements were included in the First Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2012 to June 30, 2012 and were approved as an enforceable obligation by the Successor Agency and the Oversight Board and were not disputed by the State Department of Finance.

FISCAL IMPACTS/ECONOMIC BENEFITS:

Financial/Re-Use Analysis and Proposed Purchase Price

Acquisition of the Property was completed in February 2009 and was purchased with a combination of Former Agency and City funds. At the time of approval of the DDA, the City Council was required to make the finding, pursuant to the California Community Redevelopment Law, that the price to be paid for the Property by Sudberry would not be less than either of the following:

- (1) the fair market value at highest and best use under the Redevelopment Plan, or
- (2) the fair re-use value, taking into account the uses, covenants, conditions, and development costs required by the DDA.

The Summary Report prepared by KMA, determined that finding (2) could be made. Specifically, the estimated compensation of \$1 for the sale of the Property and the fair re-use value of the Property was determined to be *negative* \$50,000. The Summary Report provided further justification for the Former Agency's financial participation in the Project. The compensation to the City is lower than the fair market value at its highest and best use for the following reasons:

- The DDA imposes a covenant on the use of the Property so that it can only be used for the development and operation of a retail center, generally consistent with the information submitted as part of Sudberry's proposal to the City.
- The DDA imposes a covenant on the use of Parcel A for the construction and operation of a neighborhood market, and that it must be opened and operated for at least one day.
- The DDA imposes the obligation on Sudberry and its contractors to comply with applicable governmental requirements, including (to the extent applicable) the payment of State prevailing wages during construction.
- Sudberry is required by the DDA to develop a first class, signature commercial/retail development that incorporates high quality features. Moreover, Sudberry is required by the DDA to adhere to the Schedule of Performance contained in the DDA, notwithstanding current market and financing conditions for new commercial/retail development.
- The DDA includes an Option Agreement that enables the City the right to take back Parcels E, F and G if Sudberry fails to meet the conditions precedent to start Phase 2 of the

Project. As a result, Sudberry will be unable to obtain financing secured by Property 2 until these conditions have been met.

- The DDA imposes, as part of the Purchase Price, the obligation on Sudberry to pay to the City 1.5% of the gross sales price from the first arm's length sale of each portion of the Property by Sudberry, excluding the sale of Parcel A and Parcel F upon certain conditions including, without limitation, if the Developer assigns these parcels to another entity pursuant to the terms of the DDA.

Recently, an appraisal of the Property was conducted on behalf of the Successor Agency. The results of the appraisal, dated July 10, 2012, took into consideration the approved entitlements for the Property, the physical constraints of the Property and the conditions upon which the City would approve any future development of the Property. Given this information, the Property was determined to have "nominal value". That is, due to the significant required on- and off-site improvement costs necessary to prepare the Property for development, together with the costs necessary to provide adequate access to the Property, and the costs to prepare the Property for development, the costs would exceed the Property's potential value (See Attachment 7, which contains a summary of this appraisal). As such, development of the Property pursuant to the terms of the DDA would benefit not only the City, but also the State and other affected taxing entities as further detailed below and should be pursued as the best viable option for long-term economic benefit to all taxing entities.

Further, as indicated in the appraisal, San Diego County's retail market is still experiencing the impact of the market recession although a few projects are moving forward, and retail and office rents remain soft. Additionally, as indicated in the appraisal, experts have agreed that San Diego County's office market will likely continue at a slow pace over the next few years as recovery from the recession occurs. Therefore, it is a tremendous benefit to the State and other affected taxing entities, including the City, to have available for immediate development the currently vacant Property into the economically productive Project as described in the DDA.

In order to assess the economic benefit of the Project as described in the DDA that the State and other affected taxing entities, including the City, would derive from the development of the Project on the Property in accordance with terms of the DDA, KMA carried out a detailed analysis of the Project. The analysis resulted in the following tax projections:

Sudberry Proceeds with Approved Development Under DDA

	State of California	County of San Diego	City of Imperial Beach	TransNet	K-14 School Districts	Total
Annual Sales Tax	\$700,000	-	\$112,000	\$56,000	-	\$868,000
Annual Property Tax	-	\$32,000	\$26,000	-	\$63,000	\$121,000
Total Annual Sales & Property Tax	\$700,000	\$32,000	\$138,000	\$56,000	\$63,000	\$989,000

It should be noted that the above table includes only the largest affected taxing entities and does not include those receiving less than 0.50% of the 1.0% property tax. According to the KMA analysis, if the Project is developed on the Property by Sudberry under the terms of the DDA, the Project would have an overall assessed value of approximately \$12,290,000 and would generate estimated annual taxable sales of approximately \$11,196,000. This, in turn,

would generate annual property tax of approximately \$121,000, with more than 50% (\$63,000) going to the South Bay Union, Sweetwater Union and Southwestern Community College districts and would generate approximately \$868,000 of annual sales tax, with over 80% (\$700,000) going to the State of California.

Beyond the direct economic benefits of the Project, KMA also analyzed the potential impacts to employment if the Project is constructed on the Property under the terms of the DDA. Based upon this analysis, it is estimated that the development of the Project on the Property would create both short-term construction and long-term permanent employment opportunities as follows:

	Sudberry Proceeds with New Development	
	Direct Impacts of Construction	Total Impact of Construction Including Direct, Indirect and Induced Impacts
Economic Impacts of Construction:		
Economic Output	\$12.5 million	\$17.0 million
Payroll	\$3.9 million	\$5.3 million
Employment (during one year construction period)	68 workers	98 workers
Permanent Employment:		
Project Description	46,200 square feet of development	
Employment @	3.00 jobs/1,000 square feet	
Total Permanent Jobs (FTEs)	139 jobs	

A more detailed description and analysis of these employment impacts are contained in Attachment 8 to this staff report. Generally speaking, the analysis provided by KMA determined that, assuming a one-year construction period, the development of the Project on the Property under the terms of the DDA would generate approximately 68 construction jobs with another 30 construction-related positions for a total of 98 short-term jobs during construction. The analysis further determined that development of the Project on the Property under the terms of the DDA, consisting of 46,200 square feet of commercial/retail development, would yield approximately 139 full-time jobs. It is also important to note that these employment impacts would create additional economic benefits to both the State and Federal governments in the form of income and other taxes. Additional analysis by KMA estimates the resulting State Income Tax generation during construction of the Project as follows:

Estimate of State Income Tax From Construction Employment

	Direct Construction	Indirect Construction	Total
Average Annual Construction Employment (person years)	56	12	68
Average Pay	\$52,000	\$83,000	
Total Income Tax Rate	\$2,910,000	\$968,000	\$3,878,000
California Income Tax Rate	9.3%	9.3%	9.3%
Number of Years to Construct	1.0 Year	1.0 Year	1.0 Year
Total State Income Tax During Construction Period	\$271,000	\$90,000	\$361,000

Additionally, beyond these economic benefits, at today's rates, the Project would also generate school fees in the amount of \$22,236 to the Sweetwater Union High School District and \$6,930 to the South Bay Union School District.

Based upon this analysis, the State would receive the greatest benefit both during construction (\$361,000 in State Income Tax) and during operation of the Project (\$700,000 in annual retail sales tax). The State would also benefit from State Income Tax generated from the estimated 139 full-time workers employed at the new shopping center. These figures, however, have not been calculated.

SUMMARY:

Development of the Project on the Property in accordance with the terms of the DDA would generate substantial short-term and long-term economic benefits not only to the City, but also to the State and all other affected taxing entities. The Project is not only projected to generate an annual and on-going flow of sales tax to both the State and the City, but it will also generate annual and on-going property tax to all affected taxing entities. Development of the Project on the Property in accordance with the DDA will also provide significant State and Federal economic benefits from income taxes generated through construction-related and full-time jobs both during construction and from the long-term operation of the Project. An appraisal dated July 10, 2012, determined that, given the significant physical and other constraints necessary to prepare the Property for development, the Property has "nominal value". Given this nominal value, the economic benefits derived from development of the Project on the Property by Sudberry in accordance with the terms of the DDA would far surpass what might be obtained by sale of the Property in its current condition. In fact, given the afore-mentioned physical constraints of the Property, together with the lengthy and expensive entitlement process any future owner of the Property would have to pursue, it is likely that the Property would not be developed for another several years at least, resulting in no short-term economic benefits and little to no long-term economic benefits. Finally, what should not be overlooked is the potential catalytic benefit this type of development can have throughout the City. Projects of this size and quality typically result in improvements to adjacent and nearby properties. To that end, speculation and interest in nearby properties has already been noted as have inquiries by other existing and potential property owners eager to see this Property developed and the Project constructed as contemplated by the DDA.

ENVIRONMENTAL DETERMINATION:

A Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

DEPARTMENT RECOMMENDATION:

Staff recommends that the Oversight Board to the Imperial Beach Redevelopment Agency Successor Agency adopt Resolution No. OB-12-10 approving, among other actions:

- (i) the terms of the DDA between the City and Sudberry
- (ii) the sale and conveyance of the Property to Sudberry pursuant to the terms of the DDA for development of the Project
- (iii) the City's retention and ownership of certain public improvements constructed as part of the Project; and
- (iv) the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Property to Sudberry for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Section 34177(e) of the Dissolution Act.

CITY MANAGER/EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department recommendation

Signature on File


Gregory Wade, Deputy Director/Assistant City Manager

Attachments:

1. Oversight Board Resolution No. OB-12-10
2. Disposition and Development Agreement Dated December 14, 2011 between the City and Sudberry
3. Letter Agreement Dated March 15, 2012 between the City and Sudberry
4. Successor Agency Resolution No. SA-12-15
5. City Council Resolution No. 2012-7243
6. Memorandum of Agreement between the City and Sudberry Regarding Ninth Street Improvements and Funding for Site Preparation Design Work dated August 12, 2012
7. Summary of Property Appraisal Prepared By Robert Backer & Associates
8. Economic Benefits Analysis Prepared By KMA