



# A G E N D A



**CITY OF IMPERIAL BEACH  
CITY COUNCIL  
PLANNING COMMISSION  
PUBLIC FINANCING AUTHORITY  
HOUSING AUTHORITY**

**IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

**DECEMBER 5, 2012**

**Council Chambers  
825 Imperial Beach Boulevard  
Imperial Beach, CA 91932**

***SPECIAL MEETING – 6:00 P.M.***

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH PLANNING COMMISSION, PUBLIC FINANCING AUTHORITY, HOUSING AUTHORITY AND IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

**SPECIAL MEETING CALL TO ORDER**

**ROLL CALL BY CITY CLERK**

**PUBLIC COMMENT** - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

**REPORTS (1-2)**

1. (1) **CITY COUNCIL ADOPTION OF RESOLUTION NO. 2012-7282 APPROVING AN EXTENSION OF VARIOUS DATES AND DEADLINES IN THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE CITY OF IMPERIAL BEACH (CITY) AND SADBERRY-PALM AVENUE LLC (SADBERRY) BY LETTER AGREEMENT; APPROVING THE TRANSFER OF REAL PROPERTY TO THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY (SUCCESSOR AGENCY) BY QUITCLAIM DEED; APPROVING THE EXECUTION OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT OF THE DDA AND THE TERMS THEREOF; AND AUTHORIZING THE CITY MANAGER TO EFFECTUATE SUCH ACTIONS AND**
- (2) **SUCCESSOR AGENCY ADOPTION OF RESOLUTION NO. SA-12-19 APPROVING AND ACCEPTING THE TRANSFER OF REAL PROPERTY FROM THE CITY PURSUANT TO A QUITCLAIM DEED; APPROVING THE EXECUTION OF THE ASSIGNMENT AND ASSUMPTION AGREEMENT OF THE DDA AND THE TERMS THEREOF PURSUANT TO RESOLUTION NO. SA-12-15 AND RESOLUTION NO. OB-12-10; AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EFFECTUATE SUCH ACTIONS. (0640-10)**

City Manager/Executive Director's Recommendation: Adopt Resolutions.

**Continued on Next Page**

Any writings or documents provided to a majority of the City Council/Planning Commission/Public Financing Authority/Housing Authority/I.B. Redevelopment Agency Successor Agency regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

**REPORTS (Continued)**

**2. REQUEST BY MEMBER OF THE CITY COUNCIL TO PLACE AN ITEM ON A CITY COUNCIL AGENDA. (0910-20)**

City Manager's Recommendation:

1. Consider Councilmember Spriggs' request to place an item on a City Council agenda and
2. Decide if the City Manager should place the item on a future meeting agenda after staff work, if any, is completed.

**ADJOURNMENT**

The Imperial Beach City Council welcomes you and encourages your continued interest and involvement in the City's decision-making process.

FOR YOUR CONVENIENCE, A COPY OF THE AGENDA AND COUNCIL MEETING PACKET MAY BE VIEWED IN THE OFFICE OF THE CITY CLERK AT CITY HALL OR ON OUR WEBSITE AT [www.cityofib.com](http://www.cityofib.com).

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/s/  
Jacqueline M. Hald, MMC  
City Clerk



STAFF REPORT  
CITY OF IMPERIAL BEACH  
CITY COUNCIL/REDEVELOPMENT AGENCY  
SUCCESSOR AGENCY

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL AND CHAIR AND MEMBERS OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY

FROM: GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR *GB*

MEETING DATE: DECEMBER 5, 2012

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT & SUCCESSOR AGENCY STAFF  
GREG WADE, DEPUTY DIRECTOR *GW*  
JENNIFER M. LYON, CITY ATTORNEY  
KENDALL D. BERKEY, SPECIAL COUNSEL

SUBJECT: (1) CITY COUNCIL ADOPTION OF RESOLUTION NO. 2012-7282 APPROVING AN EXTENSION OF VARIOUS DATES AND DEADLINES IN THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE CITY OF IMPERIAL BEACH (CITY) AND SUDBERRY-PALM AVENUE LLC (SUDBERRY) BY LETTER AGREEMENT; APPROVING THE TRANSFER OF REAL PROPERTY TO THE IMPERIAL BEACH REDVELOPMENT AGENCY SUCCESSOR AGENCY (SUCCESSOR AGENCY) BY QUITCLAIM DEED; APPROVING THE EXECUTION OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT OF THE DDA AND THE TERMS THEREOF; AND AUTHORIZING THE CITY MANAGER TO EFFECTUATE SUCH ACTIONS

(2) SUCCESSOR AGENCY ADOPTION OF RESOLUTION NO. SA-12-19 APPROVING AND ACCEPTING THE TRANSFER OF REAL PROPERTY FROM THE CITY PURSUANT TO A QUITCLAIM DEED; APPROVING THE EXECUTION OF THE ASSIGNMENT AND ASSUMPTION AGREEMENT OF THE DDA AND THE TERMS THEREOF PURSUANT TO RESOLUTION NO. SA-12-15 AND RESOLUTION NO. OB-12-10; AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EFFECTUATE SUCH ACTIONS

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**BACKGROUND:**

On September 2 , 2009, the former Imperial Beach Redevelopment Agency (the "Former Agency") approved an Exclusive Negotiation Agreement (ENA) with Sudberry Properties, Inc. for the development of the former Miracle Shopping Center and North Island Credit Union properties located at the southwest corner of 9<sup>th</sup> Street and Palm Avenue (the "Property"). The ENA was subsequently amended by a "Letter Agreement" entered into by the City and Sudberry

Properties, Inc. dated March 17, 2010, as was later amended by an "Amendment to Exclusive Negotiation Agreement" dated January 4, 2011 and by a "Second Amendment to Exclusive Negotiation Agreement" dated June 1, 2011 (all collectively referred to herein as the "ENA").

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 the "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). Neither the Cooperation Agreement nor the transfer of the Property (or any of the related documents and actions) were challenged within the applicable statute of limitations.

On June 28, 2011, Assembly Bill No. x1 26 ("AB 26" or 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 were tasked with paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the affairs of the former redevelopment agencies, including without limitation liquidating and disposing of real property owned by 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 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. The DDA was subsequently amended by "Letter Agreement" dated March 15, 2012, entered into by the City and Sudberry and later amended by a "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and Sudberry and dated August 10, 2012 (all collectively referred to herein as the "DDA" and incorporated herein by this reference).

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 ("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, resident representatives of the City and staff 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, including without limitation liquidating and disposing of real property owned by 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, in order to implement the Project and provide the parties with additional time within which to perform certain obligations and to exercise certain rights under the DDA in light of the Dissolution Act, the City and Sudberry mutually agreed to extend certain dates and deadlines set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) by an additional nine (9) months.

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 was 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 AB 26 as amended by AB 1484).

On August 15, 2012, the Successor Agency adopted Resolution No. SA-12-15 which approved, 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. In addition, the Successor Agency authorized and directed the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his or her designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. SA-12-15 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his or her designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his or her designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to such Resolution.

Further, on August 15, 2012, the City Council adopted Resolution No. 2012-7243 which approved, subject to certain conditions, the City's transfer to the Successor Agency of the residual proceeds of the sale of the Property under the terms of the DDA. In addition, provided that all required conditions were satisfied, the City Council authorized and directed the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his or her designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. 2012-7243 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his or her designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his or her designee, to effectuate the DDA, executing documents on behalf of

the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to such Resolution.

Pursuant to the Dissolution Act, the Successor Agency submitted its approvals and actions taken pursuant to Resolution No. SA-12-15 to the Oversight Board to seek its approval of the terms of the DDA and other actions, and published prior notice of such Oversight Board actions in a newspaper at least ten (10) days prior to the Oversight Board's consideration of such actions. On September 12, 2012, the Oversight Board approved all of the same actions approved by the Successor Agency as described above, by approving Resolution No. OB-12-10.

Pursuant to the Dissolution Act, Successor Agency staff then submitted notice of the Oversight Board's actions approving Resolution No. OB-12-10 to the State Department of Finance (DOF), in addition to submitting notice to the County of San Diego and other agencies.

Section 34179(h) of the Dissolution Act provides that the DOF may review such Oversight Board actions, and that such Oversight Board actions shall become effective five (5) business days after notice to the DOF in the manner specified by the DOF is provided unless the DOF requests a review. The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period. Therefore, in accordance with Section 34179(h) of the Dissolution Act, the Oversight Board approvals set forth in Resolution No. OB-12-10 are considered effective.

Additionally, in connection with the Oversight Board actions pertaining to the Property and asset dispositions, Section 34181(f) of the Dissolution Act provides that the Oversight Board actions shall be subject to review by the DOF pursuant to Section 34179 of the Dissolution Act (referenced above) except that the DOF may extend its review period from forty (40) days by up to sixty (60) days, and that if the DOF does not object to such actions, and if no action challenging such actions is commenced within sixty (60) days of the approval of the actions by the Oversight Board, then the actions of the Oversight Board shall be considered final and "can be relied upon as conclusive by any person." The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period and no action challenging such Oversight Board actions was commenced within 60 days of September 12, 2012, the date of the Oversight Board's approval of Resolution No. OB-12-10. Therefore, in accordance with Section 34181(f) of the Dissolution Act, the Oversight Board approvals set forth in Resolution No. OB-12-10 are considered final and can be relied on as conclusive by any person.

Despite the fact that, pursuant to these specific provisions of the Dissolution Act, the terms of the DDA and the Project which it contemplates have been statutorily approved, DOF staff has advised Successor Agency staff that it will not provide written acknowledgement of this approval. Without such an acknowledgement from the DOF, Sudberry will be unable to secure necessary title insurance it impossible for the Project to proceed at this time. Therefore, until completion of the Non-Housing Due Diligence Review, the issuance of a Finding of Completion by the DOF and the DOF's approval of the Successor Agency's Long Range Property Management Plan, implementation of the DDA and construction of the Project cannot proceed. A best-case scenario for all of these actions to occur puts final approval in May 2013.

**DISCUSSION:**

## A. CITY COUNCIL ACTIONS

### 1.) Extension of Various Dates and Deadlines in the DDA and Schedule of Performance (SOP):

Given the additional time needed to proceed with the project as noted above, staff is recommending that the City Council authorize the City Manager to execute a second Letter Agreement with Sudberry that will further extend various dates and deadlines in the DDA including certain dates and deadlines set forth in the SOP (Attachment No. 5 to the DDA) as determined necessary by the City Manager by an additional nine (9) months. Such extension will implement the Project and provide the parties with additional time within which to perform certain obligations and to exercise certain rights under the DDA in light of the Dissolution Act. Sudberry has verbally agreed to such extensions and to executing the proposed Letter Agreement with the City.

A summary of certain dates and deadlines which will be extended by the proposed Letter Agreement include: (i) the deadline of January 1, 2013, by which the City may terminate the DDA with payment to Sudberry of \$50,000 liquidated damages because of Project infeasibility, (ii) the deadline of February 1, 2013, by which the City and Sudberry must negotiate, complete, and approve final forms of the Attachments to the DDA for the Closing, (iii) the deadline of March 11, 2013, by which Sudberry shall submit design development drawings and landscape and grading plans for the applicable Phase of the Project, and (iv) the deadline of April 1, 2013, by which Sudberry may terminate the DDA if, based on evidentiary reports, the environmental condition of the Property is not suitable or economically feasible for development of Project.

Potential dates and deadlines that may be extended by the proposed Letter Agreement as determined necessary by the City Manager include: (i) the deadlines by which Sudberry shall submit documentation that all conditions precedent to the close of escrow for the Phase 1 Closing and for the Phase 2 Closing have been satisfied, (ii) the deadlines by which the Phase 1 Closing Date and the Phase 2 Closing Date shall occur (*which extension would exceed the period of extensions authorized by the DDA for City Manager administrative approval of extensions of the Closing Dates*), (iii) the deadlines by which the completion of construction of the Phase 1 Improvements shall occur, and (iv) the deadlines by which the commencement and completion of construction of the Phase 2 Improvements shall occur.

Further, the City's extension of dates and deadlines in the DDA and the SOP are consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in these Resolutions. Thus, this action has been previously authorized by said Resolutions and would be taken in furtherance of implementing the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. Such prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act.

### 2.) Transfer of Property to the Successor Agency:

As summarized under the background information above, the City currently has title to the Property pursuant to obligations the City assumed under the City/Former Agency Cooperation Agreement. At this time, staff is recommending that the City Council approve the transfer of the

Property from the City to the Successor Agency, pursuant to a Quitclaim Deed in substantial form attached to this Report. Sudberry has agreed in writing to such property transfer.

There are a few reasons for this proposed transfer of Property to the Successor Agency. First, the Dissolution Act states, in part, that “[t]he Legislature hereby finds that a transfer of assets by a redevelopment agency [after January 1, 2011] is deemed not to be in the furtherance of the [California Community Redevelopment Law, “CRL”] and is thereby unauthorized.” In addition, the Successor Agency received from the State Controller’s Office an “Order to Reverse RDA Asset Transfer Pursuant to Health and Safety Code Section 34167.5” dated April 20, 2012, addressed to the Successor Agency/City, County Auditor-Controller, and all other public agencies in California, which was forwarded to the Successor Agency by the San Diego County Auditor & Controller by email dated April 24, 2012 (“SCO Order”). The SCO Order provides in part that: “[i]f your city ... received any assets from a redevelopment agency after January 1, 2011, your city ... hereby is ordered to ... reverse the transfer and [convey] the applicable assets to the successor agency of the relevant redevelopment agency. This order ... applies in all situations except if your city ... has, prior to June 28, 2011, contractually committed to a third party for an expenditure or encumbrance of a specific asset.” Second, the Successor Agency received on or about October 22, 2012 preliminary findings of the State Controller’s Office as a result of the State Controller’s Office’s audit of asset transfers between January 1, 2011 and January 31, 2012, that the Property was transferred by the Former Agency to the City in violation of the Dissolution Act. Third, pursuant to the Dissolution Act, the value of certain assets determined by the State Controller to have been unlawfully transferred by the Former Agency under the Dissolution Act, unless transferred to the Successor Agency, may be added to the values set forth in the Due Diligence Reviews prepared pursuant to the Dissolution Act to the detriment of the City and the Successor Agency.

Although the Successor Agency and the City propose that the Property be transferred to the Successor Agency, the Successor Agency and the City (i) do not agree or acknowledge that the transfer of the Property by the Former Agency to the City was not in furtherance of the CRL, (ii) do not agree or acknowledge the effectiveness of the Legislature’s purported attempt at deeming as not in furtherance of the CRL the transfer of assets by the Former Agency that was accomplished at the time in accordance with the CRL and was not challenged within the applicable statute of limitations, (iii) do not agree or acknowledge the effectiveness of the SCO Order, attempting to reverse the transfer of the Property and convey the applicable assets to the Successor Agency, as referenced above, or the effectiveness of the preliminary findings of the State Controller’s Office.

The Successor Agency and City have limited financial resources and do not desire to initiate litigation at this time with regard to the purported SCO Order and preliminary findings of the State Controller’s Office. Thus, in order to avoid the costs of litigation and other costs, the Successor Agency and the City desire to take action in a manner consistent with the State Controller’s purported SCO Order and preliminary findings by effectuating the City’s transfer of its ownership interest in the Property to the Successor Agency, without acknowledging and expressly disclaiming the effectiveness of the SCO Order and findings and with a reservation of all constitutional, legal or equitable rights, privileges, and defenses in connection with these actions.

Further, the City’s transfer of its ownership interest in the Property to the Successor Agency is consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the

approvals set forth in these Resolutions. Thus, this action has been previously authorized by these Resolutions and would be taken to further implement the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. Once again, these prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act.

3.) Assignment and Assumption Agreement of the DDA:

Because the City will be transferring the Property to the Successor Agency to carry out the terms of the approved DDA, staff is also recommending that the City Council approve the execution of a proposed Assignment and Assumption Agreement of the DDA, as may be amended by the proposed Letter Agreement extending dates and deadlines. The Assignment and Assumption Agreement will provide for the City's assignment to the Successor Agency of all of the City's rights, interest and obligations under the DDA, including all Attachments and agreements entered into by the City pursuant to the DDA, and for the Successor Agency's acceptance of the assignment and assumption of all rights, interest and obligations, subject to the terms of the Assignment and Assumption Agreement. In addition, the proposed Assignment and Assumption Agreement would release and relieve the City of the performance of all terms, covenants, and conditions on the part of the City to be performed under the DDA except for the financial obligations to provide up to \$2.2 Million to pay or reimburse Sudberry for the cost of the plans, permitting, construction and installation of the public improvements as part of the Project from the funds received by the City from the Former Agency pursuant to the Cooperation Agreement, as long as the City has possession of these funds. The proposed Assignment and Assumption Agreement would not release or relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA.

The proposed Assignment and Assumption Agreement will benefit the City and the Successor Agency since the Successor Agency, not the City, would be the fee title owner of the Property, which is intended to be sold to Sudberry upon satisfaction of certain conditions for development of the Project pursuant to the terms of the DDA. In addition, Sudberry has provided its written approval to the City's assignment of pertinent documents to the Successor Agency and has verbally agreed to provide its written consent to the proposed Assignment and Assumption Agreement.

Further, the City's execution of the proposed Assignment and Assumption Agreement of the DDA is consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in these Resolutions. Thus, this action has been previously authorized by these Resolutions and would be taken to further implement the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. Again, these prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act.

**B. SUCCESSOR AGENCY ACTIONS**

1.) Approval and Acceptance of Property from the City:

At this time and in light of the discussion above, staff is recommending that the Successor Agency approve and accept a transfer of the Property from the City pursuant to a Quitclaim

Deed, with the same acknowledgements stated above in connection with the Dissolution Act, the SCO Order and State Controller's preliminary findings, without acknowledging the effectiveness of and expressly disclaiming the SCO Order and findings, and with a reservation of all constitutional, legal or equitable rights, privileges, and defenses in connection with such actions. Sudberry has agreed in writing to this property transfer.

The Successor Agency's acceptance of the City's ownership interest in the Property is consistent with provisions of the Dissolution Act and consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in these Resolutions. Thus, this action has been previously authorized by these Resolutions and would be taken to further implement the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. These prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act.

Once the Property is held in the name of the Successor Agency, it will likely be included in the Successor Agency's proposed Long Range Property Management Plan to be submitted to the DOF for review and approval in accordance with the Dissolution Act, which will provide the details for disposition and development of such Property.

## 2.) Assignment and Assumption Agreement of the DDA:

Because the City will be transferring the Property to the Successor Agency to carry out the terms of the approved DDA, staff is recommending that the Successor Agency also approve the execution of the proposed Assignment and Assumption Agreement of the DDA that will provide for the City's assignment to the Successor Agency of all of the City's rights, interest and obligations under the DDA, including all Attachments attached thereto and agreements entered into by the City pursuant to the DDA, and for the Successor Agency's acceptance of such assignment and assumption of all rights, interest and obligations subject to the terms of the Assignment and Assumption Agreement as described above under City Council Actions. As also discussed above, the proposed Assignment and Assumption Agreement would release and relieve the City of the performance of all terms, covenants, and conditions on the part of the City to be performed under the DDA except for the financial obligations to provide up to \$2.2 Million to pay or reimburse Sudberry for the cost of the public improvements covered under the DDA for the Project from the funds received by the City from the Former Agency pursuant to the Cooperation Agreement, as long as the City has possession of such funds. As stated above, the proposed Assignment and Assumption Agreement would not release or relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA.

Finally, the Successor Agency's execution of the proposed Assignment and Assumption Agreement is consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in these Resolutions. Thus, this action has been previously authorized by these Resolutions and would be taken to further implement the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. Such prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act.

## **SUMMARY OF THE BENEFITS OF THE PROJECT**

As specified in more detail in the staff report and exhibits to the August 15, 2012 City Council/Successor Agency agenda item approving the terms of the DDA and other actions (such staff report and exhibits are hereby incorporated by reference), the development of 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 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.

Additionally, an appraisal dated July 10, 2012, determined that, given the significant physical and other constraints necessary to prepare the Property for development, the Property had "nominal value." Given this nominal value, the economic benefits derived from development of 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 site constraints, together with the lengthy and expensive entitlement process any future owner of the Property would have to pursue, it is unlikely that the Property would be developed for another several years at least, resulting in 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 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:

1. The City Council of the City of Imperial Beach adopt Resolution No. 2012-7282 approving an extension of various dates and deadlines in the DDA by a Letter Agreement; approving the transfer of real property to the Successor Agency by Quitclaim Deed; approving the execution of an Assignment and Assumption Agreement

of the DDA and the terms thereof; and authorizing the City Manager to effectuate such actions.

2. The Imperial Beach Redevelopment Agency Successor Agency adopt Resolution No. SA-12-19 approving and accepting the transfer of real property from the City pursuant to a Quitclaim Deed; approving the execution of an Assignment and Assumption Agreement of the DDA and the terms thereof pursuant to Resolution No. SA-12-15 and Resolution No. OB-12-10; and authorizing the Executive Director to effectuate such actions.

**CITY MANAGER/EXECUTIVE DIRECTOR'S RECOMMENDATION:**

Approve Department recommendation.

Attachments:

1. Resolution No. 2012-7282
2. Resolution No. SA-12-19
3. Resolution No. SA-12-15
4. Resolution No. 2012-7243
5. Resolution No. OB-12-10
6. Letter Agreement Dated March 15, 2012
7. Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work dated August 10, 2012
8. Form of Quitclaim Deed

## RESOLUTION NO. 2012-7282

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH APPROVING AN EXTENSION OF VARIOUS DATES AND DEADLINES IN THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE CITY OF IMPERIAL BEACH AND SUDBERRY-PALM AVENUE LLC BY LETTER AGREEMENT; APPROVING THE TRANSFER OF REAL PROPERTY TO THE IMPERIAL BEACH REDVELOPMENT AGENCY SUCCESSOR AGENCY BY QUITCLAIM DEED; APPROVING THE EXECUTION OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT OF THE DDA AND THE TERMS THEREOF; AND AUTHORIZING THE CITY MANAGER TO EFFECTUATE SUCH ACTIONS**

**WHEREAS**, the City of Imperial Beach (the "City") has entered into that certain Disposition and Development Agreement with Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

**WHEREAS**, the DDA was amended by that certain "Letter Agreement" entered into by the City and the Developer and dated March 15, 2012, and further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Developer and dated August 10, 2012, all collectively referred to herein as the "DDA" and incorporated herein by this reference; and

**WHEREAS**, the DDA pertains to that certain real property constituting two (2) parcels formerly owned by the former Imperial Beach Redevelopment Agency (the "Former Agency") and conveyed to the City for development of the Project (Parcels A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising in total approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7<sup>th</sup> Street and 9<sup>th</sup> Street, Imperial Beach, California and (defined collectively in the DDA as the "Site"); and

**WHEREAS**, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

**WHEREAS**, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

**WHEREAS**, Assembly Bill No. X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) ("AB 26" or the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8

(commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Former Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies, including without limitation liquidating and disposing of real property owned by the former redevelopment agencies; and

**WHEREAS**, on January 5, 2012, the City Council (the "City Council") of the City adopted Resolution No. 2012-7136 accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

**WHEREAS**, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

**WHEREAS**, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

**WHEREAS**, the Dissolution Act was amended when the Governor signed Assembly Bill No. 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means AB 26 as amended by AB 1484); and

**WHEREAS**, on August 15, 2012, the Successor Agency adopted Resolution No. SA-12-15 which approved, among other actions, (i) the terms of the DDA between the City and the Developer, (ii) the sale and conveyance of the Site to the Developer pursuant to the terms of the DDA for development of the Project; (iii) the City's retention and ownership of the 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 Site to the Developer 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 Health and Safety Code Section 34177(e) of the Dissolution Act. In addition, the Successor Agency authorized and directed the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. SA-12-15 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be

performed pursuant to such Resolution; and

**WHEREAS**, on August 15, 2012, the City Council adopted Resolution No. 2012-7243 which approved, subject to certain conditions, the City's transfer to the Successor Agency of the residual proceeds of the sale of the Site under the terms of the DDA. In addition, provided that all required conditions were satisfied, the City Council authorized and directed the Executive Director of the Successor Agency, or his designee, and the City Manager, or his designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. 2012-7243 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to such Resolution; and

**WHEREAS**, pursuant to the Dissolution Act, the Successor Agency submitted its approvals and actions taken pursuant to Resolution No. SA-12-15 to the Oversight Board to seek its approval of the terms of the DDA and other actions, and published prior notice of such Oversight Board actions in a newspaper at least ten (10) days prior to the Oversight Board's consideration of such actions. On September 12, 2012, the Oversight Board approved all of the same actions approved by the Successor Agency as described above, by its adoption of Resolution No. OB-12-10; and

**WHEREAS**, pursuant to the Dissolution Act, Successor Agency staff then submitted notice of the Oversight Board's adoption of Resolution No. OB-12-10, and approvals therein, to the State Department of Finance (DOF), in addition to submitting notice of such actions to the County of San Diego and other agencies; and

**WHEREAS**, Health and Safety Code Section 34179(h) of the Dissolution Act provides that the DOF may review such Oversight Board actions, and that such Oversight Board actions shall become effective five (5) business days after notice to the DOF in the manner specified by the DOF is provided unless the DOF requests a review. The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period. Therefore, in accordance with Health and Safety Code Section 34179(h) of the Dissolution Act, the Oversight Board approvals set forth in Resolution No. OB-12-10 are considered effective; and

**WHEREAS**, additionally, in connection with the Oversight Board actions pertaining to the Site and asset dispositions, Health and Safety Code Section 34181(f) of the Dissolution Act provides in pertinent part that the Oversight Board actions shall be subject to review by the DOF pursuant to Health and Safety Code Section 34179 of the Dissolution Act except that the DOF may extend its review period from forty (40) days by up to sixty (60) days, and that if the DOF does not object to such actions, and if no action challenging such actions is commenced within sixty (60) days of the approval of the actions by the Oversight Board, then the actions of the Oversight Board shall be considered final and "can be relied upon as conclusive by any person." The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period and no action challenging such Oversight Board actions was commenced within 60 days of September 12, 2012, the date of the Oversight Board's approval of Resolution No. OB-12-10. Therefore, in accordance with Health and Safety Code Section 34181(f) of the Dissolution Act, the Oversight Board approvals set forth in

Resolution No. OB-12-10 are considered final and can be relied on as conclusive by any person; and

**WHEREAS**, the DDA, including the Schedule of Performance (“SOP”) (Attachment No. 5 to the DDA), contains various dates and deadlines for the performance of obligations and the exercise of rights by the City and the Developer, respectively, set forth in the DDA. Due to delays in implementation of the Project caused by issues relating to the Dissolution Act and proceedings pursuant thereto, staff is recommending that the City Council authorize the City Manager to execute a second Letter Agreement with the Developer that will further extend various dates and deadlines in the DDA, including certain dates and deadlines set forth in the SOP, as determined necessary by the City Manager by an additional nine (9) months. Such extension will implement the Project and provide the parties with additional time within which to perform certain obligations and to exercise certain rights under the DDA in light of the Dissolution Act. The Developer has verbally agreed to such extensions and to executing the proposed Letter Agreement with the City; and

**WHEREAS**, in light of certain provisions in the Dissolution Act attempting to prohibit certain transfers of assets from a former redevelopment agency to a city after January 1, 2011 as declaring such transfers as not being in furtherance of the Redevelopment Law and penalizing a city and a successor agency as a result of any such asset transfers, and in light of certain correspondence received by the Successor Agency from the State Controller’s Office in connection with the Site and its interpretation of the Dissolution Act, staff is recommending that the City Council approve the transfer of the Site from the City to the Successor Agency pursuant to a Quitclaim Deed. The Developer has agreed in writing to the City’s transfer of the Site to the Successor Agency; and

**WHEREAS**, although the City proposes that the Site be transferred to the Successor Agency, the City (i) does not agree or acknowledge that the transfer of the Site by the Former Agency to the City was not in furtherance of the Redevelopment Law, (ii) does not agree or acknowledge the effectiveness of the Legislature’s purported attempt by the Dissolution Act at deeming as not in furtherance of the Redevelopment Law the transfer of assets by the Former Agency that was accomplished at the time in accordance with the Redevelopment Law and was not challenged within the applicable statute of limitations, (iii) does not agree or acknowledge the effectiveness of the correspondence received by the State Controller’s Office in connection with the Site; and

**WHEREAS**, the City has limited financial resources and does not desire to initiate litigation at this time with regard to the correspondence received by the Successor Agency from the State Controller’s Office in connection with the Site. Thus, in order to avoid the costs of litigation and other costs, the City desires to take action in a manner consistent with the State Controller’s Office’s correspondence by effectuating the City’s transfer of its ownership interest in the Site to the Successor Agency, without acknowledging and expressly disclaiming the effectiveness of the correspondence in connection with the Site and with a reservation of all constitutional, legal or equitable rights, privileges, and defenses in connection with these actions; and

**WHEREAS**, because the City will be transferring the Site to the Successor Agency to carry out the terms of the approved DDA, staff is also recommending that the City Council approve the execution of a proposed Assignment and Assumption Agreement of the DDA, as may be amended by the proposed Letter Agreement extending dates and deadlines. The Assignment and Assumption Agreement will provide for the City’s assignment to the Successor Agency of all of the City’s rights, interest and obligations under the DDA, including all

Attachments and agreements entered into by the City pursuant to the DDA, and for the Successor Agency's acceptance of the assignment and assumption of all rights, interest and obligations, subject to the terms of the Assignment and Assumption Agreement. In addition, the proposed Assignment and Assumption Agreement would release and relieve the City of the performance of all terms, covenants, and conditions on the part of the City to be performed under the DDA except for the financial obligations to provide up to \$2.2 Million to pay or reimburse the Developer for the cost of the plans, permitting, construction and installation of the Public Improvements as part of the Project from the funds received by the City from the Former Agency pursuant to the Cooperation Agreement, as long as the City has possession of these funds. The proposed Assignment and Assumption Agreement would not release or relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA; and

**WHEREAS**, the City's proposed extension of dates and deadlines in the DDA including the SOP, the City's proposed transfer of its ownership interest in the Site to the Successor Agency by Quitclaim Deed, and the City's proposed execution of the proposed Assignment and Assumption Agreement of the DDA are each consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in these Resolutions. Thus, these actions have been previously authorized by these Resolutions and would be taken to further implement the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. These prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act; and

**WHEREAS**, 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.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Imperial Beach as follows:

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

**Section 2:** The City Council hereby approves the extension of various dates and deadlines set forth in the DDA, including certain dates and deadlines set forth in the Schedule of Performance ("SOP") (Attachment No. 5 to the DDA), as determined necessary by the City Manager by an additional nine (9) months. Further, the City Council authorizes the City Manager, or his designee, to execute a Letter Agreement, in the form as approved by the City Manager and the City Attorney, to extend such dates and deadlines as determined necessary by the City Manager by an additional nine (9) months, in accordance with this Resolution.

- Section 3:** The City Council hereby approves the transfer of the City's ownership interest in the Site to the Successor Agency and authorizes the City Manager, or his designee, to execute a Quitclaim Deed, in the form as approved by the City Manager and the City Attorney, to convey the City's fee title ownership of the Site from the City to the Successor Agency, in accordance with this Resolution.
- Section 4.** The City Council hereby approves the City's assignment to the Successor Agency of all of the City's rights, interest and obligations under the DDA, including all Attachments and agreements entered into by the City pursuant to the DDA, provided the Successor Agency accepts the assignment and assumption of all rights, interest and obligations pursuant to an Assignment and Assumption Agreement, in the form as approved by the City Manager and the City Attorney. Further, the City Council authorizes the City Manager, or his designee, to execute the Assignment and Assumption Agreement, in the form as approved by the City Manager and the City Attorney, which will include the release of the City from the performance of all terms, covenants, and conditions on the part of the City to be performed under the DDA except for the financial obligations to provide up to \$2.2 Million to pay or reimburse the Developer for the cost of the plans, permitting, construction and installation of the Public Improvements as part of the Project from the funds received by the City from the Former Agency pursuant to the Cooperation Agreement, as long as the City has possession of these funds.
- Section 5.** The City Council hereby authorizes the City Manager to take such other actions and execute such other documents as are necessary to effectuate the intent and terms of this Resolution.
- Section 6:** The adoption of this Resolution and actions approved and taken pursuant to this Resolution are not intended to waive, and shall not constitute a waiver, by the City and/or the Successor Agency of any constitutional, legal and/or equitable rights that the City and/or the Successor Agency may have under law and/or in equity, relating to the effectiveness of the DDA or previous actions taken with respect to the DDA, or to challenge, through administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26/AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26/AB 1484, and any and all related legal and factual issues, and the City expressly reserves any and all such rights, privileges, and defenses available under law and in equity.
- Section 7:** 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



## RESOLUTION NO. SA-12-19

**RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING AND ACCEPTING THE TRANSFER OF REAL PROPERTY FROM THE CITY PURSUANT TO A QUITCLAIM DEED; APPROVING THE EXECUTION OF THE ASSIGNMENT AND ASSUMPTION AGREEMENT OF THE DDA AND THE TERMS THEREOF PURSUANT TO RESOLUTION NO. SA-12-15 AND RESOLUTION NO. OB-12-10; AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EFFECTUATE SUCH ACTIONS**

**WHEREAS**, the City of Imperial Beach (the "City") has entered into that certain Disposition and Development Agreement with Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

**WHEREAS**, the DDA was amended by that certain "Letter Agreement" entered into by the City and the Developer and dated March 15, 2012, and further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Developer and dated August 10, 2012, all collectively referred to herein as the "DDA" and incorporated herein by this reference; and

**WHEREAS**, the DDA pertains to that certain real property constituting two (2) parcels formerly owned by the former Imperial Beach Redevelopment Agency (the "Former Agency") and conveyed to the City for development of the Project (Parcels A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising in total approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7<sup>th</sup> Street and 9<sup>th</sup> Street, Imperial Beach, California and (defined collectively in the DDA as the "Site"); and

**WHEREAS**, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

**WHEREAS**, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

**WHEREAS**, Assembly Bill No. X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) ("AB 26" or the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Former Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies, including without limitation liquidating and disposing of real property owned by the former redevelopment agencies; and

**WHEREAS**, on January 5, 2012, the City Council (the "City Council") of the City adopted Resolution No. 2012-7136 accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

**WHEREAS**, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

**WHEREAS**, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

**WHEREAS**, the Dissolution Act was amended when the Governor signed Assembly Bill No. 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means AB 26 as amended by AB 1484); and

**WHEREAS**, on August 15, 2012, the Successor Agency adopted Resolution No. SA-12-15 which approved, among other actions, (i) the terms of the DDA between the City and the Developer, (ii) the sale and conveyance of the Site to the Developer pursuant to the terms of the DDA for development of the Project; (iii) the City's retention and ownership of the 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 Site to the Developer 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 Health and Safety Code Section 34177(e) of the Dissolution Act. In addition, the Successor Agency authorized and directed the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. SA-12-15 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to such Resolution; and

**WHEREAS**, on August 15, 2012, the City Council adopted Resolution No. 2012-7243 which approved, subject to certain conditions, the City's transfer to the Successor Agency of the residual proceeds of the sale of the Site under the terms of the DDA. In addition, provided that all required conditions were satisfied, the City Council authorized and directed the Executive Director of the Successor Agency, or his designee, and the City Manager, or his designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. 2012-7243 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to such Resolution; and

**WHEREAS**, pursuant to the Dissolution Act, the Successor Agency submitted its approvals and actions taken pursuant to Resolution No. SA-12-15 to the Oversight Board to seek its approval of the terms of the DDA and other actions, and published prior notice of such Oversight Board actions in a newspaper at least ten (10) days prior to the Oversight Board's consideration of such actions. On September 12, 2012, the Oversight Board approved all of the same actions approved by the Successor Agency as described above, by its adoption of Resolution No. OB-12-10; and

**WHEREAS**, pursuant to the Dissolution Act, Successor Agency staff then submitted notice of the Oversight Board's adoption of Resolution No. OB-12-10, and approvals therein, to the State Department of Finance (DOF), in addition to submitting notice of such actions to the County of San Diego and other agencies; and

**WHEREAS**, Health and Safety Code Section 34179(h) of the Dissolution Act provides that the DOF may review such Oversight Board actions, and that such Oversight Board actions shall become effective five (5) business days after notice to the DOF in the manner specified by the DOF is provided unless the DOF requests a review. The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period. Therefore, in accordance with Health and Safety Code Section 34179(h) of the Dissolution Act, the Oversight Board approvals set forth in Resolution No. OB-12-10 are considered effective; and

**WHEREAS**, additionally, in connection with the Oversight Board actions pertaining to the Site and asset dispositions, Health and Safety Code Section 34181(f) of the Dissolution Act provides in pertinent part that the Oversight Board actions shall be subject to review by the DOF pursuant to Health and Safety Code Section 34179 of the Dissolution Act except that the DOF may extend its review period from forty (40) days by up to sixty (60) days, and that if the DOF does not object to such actions, and if no action challenging such actions is commenced within sixty (60) days of the approval of the actions by the Oversight Board, then the actions of the Oversight Board shall be considered final and "can be relied upon as conclusive by any person." The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period and no action challenging such Oversight Board actions was commenced within 60 days of September 12, 2012, the date of the Oversight Board's approval of Resolution No. OB-12-10. Therefore, in accordance with Health and Safety Code Section 34181(f) of the Dissolution Act, the Oversight Board approvals set forth in Resolution No. OB-12-10 are considered final and can be relied on as conclusive by any person; and

**WHEREAS**, in light of certain provisions in the Dissolution Act attempting to prohibit certain transfers of assets from a former redevelopment agency to a city after January 1, 2011 as declaring such transfers as not being in furtherance of the Redevelopment Law and penalizing a city and a successor agency as a result of any such asset transfers, and in light of certain correspondence received by the Successor Agency from the State Controller's Office in connection with the Site and its interpretation of the Dissolution Act, staff is recommending that the Successor Agency approve and accept the transfer of the Site from the City pursuant to a Quitclaim Deed. The Developer has agreed in writing to the City's transfer of the Site to the Successor Agency; and

**WHEREAS**, although the Successor Agency proposes that the Site be transferred from the City to the Successor Agency, the Successor Agency (i) does not agree or acknowledge that the transfer of the Site by the Former Agency to the City was not in furtherance of the Redevelopment Law, (ii) does not agree or acknowledge the effectiveness of the Legislature's purported attempt by the Dissolution Act at deeming as not in furtherance of the Redevelopment Law the transfer of assets by the Former Agency that was accomplished at the time in accordance with the Redevelopment Law and was not challenged within the applicable statute of limitations, (iii) does not agree or acknowledge the effectiveness of the correspondence received by the State Controller's Office in connection with the Site; and

**WHEREAS**, the Successor Agency has limited financial resources and does not desire to initiate litigation at this time with regard to the correspondence received by the Successor Agency from the State Controller's Office in connection with the Site. Thus, in order to avoid the costs of litigation and other costs, the Successor Agency desires to take action in a manner consistent with the State Controller's Office's correspondence by effectuating the City's transfer of its ownership interest in the Site to the Successor Agency, without acknowledging and expressly disclaiming the effectiveness of the correspondence in connection with the Site and with a reservation of all constitutional, legal or equitable rights, privileges, and defenses in connection with these actions; and

**WHEREAS**, because the Successor Agency will be accepting the transfer of the Site from the City to carry out the terms of the approved DDA, staff is also recommending that the Successor Agency approve the execution of a proposed Assignment and Assumption Agreement of the DDA. The Assignment and Assumption Agreement will provide for the City's assignment to the Successor Agency of all of the City's rights, interest and obligations under the DDA, including all Attachments and agreements entered into by the City pursuant to the DDA, and for the Successor Agency's acceptance of the assignment and assumption of all rights, interest and obligations, subject to the terms of the Assignment and Assumption Agreement. In addition, the proposed Assignment and Assumption Agreement would release and relieve the City of the performance of all terms, covenants, and conditions on the part of the City to be performed under the DDA except for the financial obligations to provide up to \$2.2 Million to pay or reimburse the Developer for the cost of the plans, permitting, construction and installation of the Public Improvements as part of the Project from the funds received by the City from the Former Agency pursuant to the Cooperation Agreement, as long as the City has possession of these funds. The proposed Assignment and Assumption Agreement would not release or relieve any other party from the obligations under the DDA, or relieve the City of any of its rights and interests relating to the City's obligations under the DDA; and

**WHEREAS**, the Successor Agency's proposed approval and acceptance of the transfer of the Site from the City pursuant to a Quitclaim Deed and the Successor Agency's proposed approval and execution of the proposed Assignment and Assumption Agreement of the DDA

are each consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in these Resolutions. Thus, these actions have been previously authorized by these Resolutions and would be taken to further implement the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. These prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act; and

**WHEREAS**, 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.

**NOW, THEREFORE, BE IT RESOLVED** by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1:** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2:** The Successor Agency hereby approves and accepts the transfer of the City's ownership interest in the Site from the City and authorizes the Executive Director, or his designee, to execute the Certificate of Acceptance of the Quitclaim Deed, in the form as approved by the Executive Director and the General Counsel, to convey the City's fee title ownership of the Site from the City to the Successor Agency, in accordance with this Resolution.
- Section 3.** The Successor Agency hereby approves the Successor Agency's acceptance and assumption of all of the City's rights, interest and obligations under the DDA, including all Attachments and agreements entered into by the City pursuant to the DDA, pursuant to an Assignment and Assumption Agreement, in the form as approved by the Executive Director and the General Counsel. Further, the Successor Agency authorizes the Executive Director, or his designee, to execute the Assignment and Assumption Agreement, in the form as approved by the Executive Director and the General Counsel, which will include the release of the City from the performance of all terms, covenants, and conditions on the part of the City to be performed under the DDA except for the financial obligations to provide up to \$2.2 Million to pay or reimburse the Developer for the cost of the plans, permitting, construction and installation of the Public Improvements as part of the Project from the funds received by the City from the Former Agency pursuant to the Cooperation Agreement, as long as the City has possession of these funds.

**Section 4.** The Successor Agency hereby authorizes the Executive Director to take such other actions and execute such other documents as are necessary to effectuate the intent and terms of this Resolution.

**Section 5:** The adoption of this Resolution and actions approved and taken pursuant to this Resolution are not intended to waive, and shall not constitute a waiver, by the Successor Agency and/or the City of any constitutional, legal and/or equitable rights that the Successor Agency and/or the City may have under law and/or in equity, relating to the effectiveness of the DDA or previous actions taken with respect to the DDA, or to challenge, through administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26/AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26/AB 1484, and any and all related legal and factual issues, and the Successor Agency expressly reserves any and all such rights, privileges, and defenses available under law and in equity.

**Section 6:** 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.

**PASSED, APPROVED, AND ADOPTED** by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 5<sup>th</sup> day of December 2012, by the following vote:

**AYES: BOARDMEMBERS:**  
**NOES: BOARDMEMBERS:**  
**ABSENT: BOARDMEMBERS:**

\_\_\_\_\_/s/  
**JAMES C. JANNEY**  
**CHAIRPERSON**

**ATTEST:**

\_\_\_\_\_/s/  
**JACQUELINE M. HALD, MMC**  
**SECRETARY**

**RESOLUTION NO. SA-12-15****RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT AND THE TRANSFER OF OWNERSHIP OF REAL PROPERTY AND RETENTION AND OWNERSHIP OF CERTAIN PUBLIC IMPROVEMENTS**

**WHEREAS**, AB X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) (the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Imperial Beach Redevelopment Agency (the "Former Agency"), were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, the City Council (the "City Council") of the City of Imperial Beach (the "City") adopted Resolution No. 2012-7136 on January 5, 2012, accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

**WHEREAS**, the Dissolution Act was amended when the Governor signed Assembly Bill 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means Assembly Bill X1 26 as amended by AB 1484); and

**WHEREAS**, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

**WHEREAS**, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

**WHEREAS**, the City has entered into that certain Disposition and Development Agreement by and between the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking consisting of 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related

improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

**WHEREAS**, the DDA pertains to that certain real property constituting two (2) parcels (Parcels A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7<sup>th</sup> Street and 9<sup>th</sup> Street, Imperial Beach, California and (defined collectively in the DDA as the "Site"); and

**WHEREAS**, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

**WHEREAS**, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

**WHEREAS**, the Site 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; and

**WHEREAS**, Health and Safety Code Section 34181(a) provides, in pertinent part, that the Oversight Board shall direct the Successor Agency to transfer ownership to the appropriate public jurisdiction of all assets and property constructed and used for governmental purposes; and

**WHEREAS**, the City is the appropriate public jurisdiction for ownership of the Public Improvements pursuant to the DDA due to the nature of the Public Improvements that will be developed as part of the Project and constructed and used for governmental purposes, as authorized pursuant to Health and Safety Code Section 34181(a); and

**WHEREAS**, 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.

**NOW, THEREFORE, BE IT RESOLVED** by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1:** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2:** The Successor Agency hereby approves of the terms of the DDA.
- Section 3:** The Successor Agency hereby approves of the sale and conveyance of the Site from the City to the Developer in accordance with the terms and conditions set forth in the DDA, for the purpose of the Developer developing the Project.
- Section 4:** The Successor Agency hereby approves the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Site to the Developer 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 Health and Safety Code Section 34177(e).
- Section 5:** The Successor Agency hereby approves the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA.
- Section 6:** The Successor Agency hereby acknowledges and agrees that the DDA constitutes the existence of an enforceable obligation pursuant to Part 1.8 and Part 1.85 of Division 24 of the Health and Safety Code for the purposes of, without limitation, the disposition of assets previously owned by the Former Agency.
- Section 7:** The Successor Agency hereby authorizes and directs the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his or her designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by this Resolution including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) as determined necessary by the City Manager, or his or her designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his or her designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to this Resolution.

**Section 8:** The Successor Agency does not intend, by adoption of this Resolution, to waive any constitutional, legal and/or equitable rights of the Successor Agency or the City under law and/or in equity, including, without limitation, the effectiveness of the DDA or previous actions taken with respect to the DDA, by virtue of the adoption of this Resolution and actions approved and taken pursuant to this Resolution and, therefore, reserves all such rights of the Successor Agency and the City under law and/or in equity.

**Section 9:** 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.

**PASSED, APPROVED, AND ADOPTED** by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 15<sup>th</sup> day of August 2012, by the following vote:

<b>AYES:</b>	<b>BOARDMEMBERS:</b>	<b>KING, BRAGG, SPRIGGS, JANNEY</b>
<b>NOES:</b>	<b>BOARDMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>BOARDMEMBERS:</b>	<b>BILBRAY</b>

*/s/*

\_\_\_\_\_  
**JAMES C. JANNEY,**  
**CHAIRPERSON,**

**ATTEST:**

*/s/*

\_\_\_\_\_  
**JACQUELINE M. HALD, MMC**  
**SECRETARY**

**RESOLUTION NO. 2012-7243**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH APPROVING, SUBJECT TO CONDITIONS PRECEDENT, THE CITY'S TRANSFER TO THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY OF THE RESIDUAL PROCEEDS RECEIVED FROM THE SALE OF REAL PROPERTY PURSUANT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF IMPERIAL BEACH AND SUDBERRY-PALM AVENUE LLC**

**WHEREAS**, AB X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) (the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Imperial Beach Redevelopment Agency (the "Former Agency"), were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, the City Council (the "City Council") of the City of Imperial Beach (the "City") adopted Resolution No. 2012-7136 on January 5, 2012, accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

**WHEREAS**, the Dissolution Act was amended when the Governor signed Assembly Bill 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means Assembly Bill X1 26 as amended by AB 1484); and

**WHEREAS**, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

**WHEREAS**, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

**WHEREAS**, the City has entered into that certain Disposition and Development Agreement by and between the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial

space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking consisting of 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

**WHEREAS**, the DDA pertains to that certain real property constituting two (2) parcels (Parcels A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7<sup>th</sup> Street and 9<sup>th</sup> Street, Imperial Beach, California and (defined collectively in the DDA as the "Site"); and

**WHEREAS**, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

**WHEREAS**, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

**WHEREAS**, the Site 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; and

**WHEREAS**, Health and Safety Code Section 34181(a) provides, in pertinent part, that the Oversight Board shall direct the Successor Agency to transfer ownership to the appropriate public jurisdiction of all assets and property constructed and used for governmental purposes; and

**WHEREAS**, the City is the appropriate public jurisdiction for ownership of the Public Improvements pursuant to the DDA due to the nature of the Public Improvements that will be developed as part of the Project and constructed and used for governmental purposes, as authorized pursuant to Health and Safety Code Section 34181(a); and

**WHEREAS**, the Successor Agency and Oversight Board will each consider approving its own resolution (the "Successor Agency Resolution" and the "Oversight Board Resolution", respectively) to: (1) approve of the terms of the DDA; (2) approve of the sale and conveyance of the Site from the City to the Developer in accordance with the terms and conditions set forth in the DDA, for the purpose of the Developer developing the Project; (3) approve of the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; (4) approve of the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Site to the Developer 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 Health and Safety Code Section 34177(e); and (5) acknowledge

and agree that the DDA constitutes the existence of an enforceable obligation pursuant to Part 1.8 and Part 1.85 of Division 24 of the Health and Safety Code for the purposes of, without limitation, the disposition of assets previously owned by the Former Agency; and

**WHEREAS**, 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.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Imperial Beach as follows:

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

**Section 2:** Provided that all of the following conditions are satisfied (collectively, the "Conditions"), the City Council hereby approves the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Site to the Developer 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 California Health and Safety Code Section 34177(e):

- (1) The Successor Agency adopts the Successor Agency Resolution;
- (2) The Oversight Board adopts the Oversight Board Resolution; and
- (3) (a) The Department of Finance either does not review the Oversight Board Resolution within the time period set forth in the Dissolution Act and the Oversight Board Resolution and the actions therein are deemed effective pursuant to the Dissolution Act or (b) the Department of Finance reviews the Oversight Board Resolution within the time period set forth in the Dissolution Act and the Department of Finance approves of the Oversight Board Resolution and the actions therein.

**Section 3:** Provided that all of the Conditions are satisfied, the City Council hereby authorizes and directs the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his or her designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by this Resolution including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) as determined necessary by the City Manager, or his or her designee, under the DDA, approving amendments to the DDA and its Attachments as

determined necessary by the City Manager, or his or her designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds or quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to this Resolution.

**Section 4:** The City Council does not intend, by adoption of this Resolution, to waive any constitutional, legal and/or equitable rights of the Successor Agency or the City under law and/or in equity, including, without limitation, the effectiveness of the DDA or previous actions taken with respect to the DDA, by virtue of the adoption of this Resolution and actions approved and taken pursuant to this Resolution and, therefore, reserves all such rights of the Successor Agency and the City under law and/or in equity.

**Section 5:** 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.

**PASSED, APPROVED, AND ADOPTED** by the City of Imperial Beach at its meeting held on the 15<sup>th</sup> day of August 2012, by the following vote:

**AYES:** COUNCILMEMBERS: KING, BRAGG, SPRIGGS, JANNEY  
**NOES:** COUNCILMEMBERS: NONE  
**ABSENT:** COUNCILMEMBERS: BILBRAY

/s/

~~JAMES C. JANNEY, MAYOR~~

**ATTEST:**

/s/

~~JACQUELINE M. HALD, MMC~~  
CITY CLERK

## RESOLUTION NO. OB-12-10

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT 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**

**WHEREAS**, AB X1 26 (2011-2012 1<sup>st</sup> Ex. Sess.) (the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

**WHEREAS**, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

**WHEREAS**, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Imperial Beach Redevelopment Agency (the "Former Agency"), were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

**WHEREAS**, the City Council (the "City Council") of the City of Imperial Beach (the "City") adopted Resolution No. 2012-7136 on January 5, 2012, accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

**WHEREAS**, the Dissolution Act was amended when the Governor signed Assembly Bill 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means Assembly Bill X1 26 as amended by AB 1484); and

**WHEREAS**, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

**WHEREAS**, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

**WHEREAS**, the City has entered into that certain Disposition and Development Agreement by and between the City and Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking consisting of 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

**WHEREAS**, the DDA pertains to that certain real property constituting two (2) parcels (Parcel A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7<sup>th</sup> Street and 9<sup>th</sup> Street, Imperial Beach, California and (defined collectively in the DDA as the "Site"); and

**WHEREAS**, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

**WHEREAS**, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

**WHEREAS**, the Site 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; and

**WHEREAS**, Health and Safety Code Section 34177(h) provides, in pertinent part, that the Successor Agency is required to expeditiously wind down the affairs of the Former Agency pursuant to the Dissolution Act and in accordance with the direction of the Oversight Board; and

**WHEREAS**, Health and Safety Code Section 34177(e) of the Dissolution Act provides that the Successor Agency shall 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; and

**WHEREAS**, Health and Safety Code Section 34181(a) of the Dissolution Act provides, in pertinent part, that the Oversight Board has the authority to approve the disposition of assets and property of the Former Agency; provided, however, the Oversight Board has the authority to approve the transfer of 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; and

**WHEREAS**, the City is the appropriate public jurisdiction for ownership of the Public Improvements pursuant to the DDA due to the nature of the Public Improvements that will be developed as part of the Project and constructed and used for governmental purposes, as authorized pursuant to Health and Safety Code Section 34181(a); and

**WHEREAS**, Health and Safety Code Section 34181(e) provides, in pertinent part, that the Oversight Board has the authority to approve the proposed actions if it finds such actions in the best interests of the taxing entities; and

**WHEREAS**, consistent with the Oversight Board's authority to oversee the expeditious wind down of the Former Agency's fiscal and business affairs and the expeditious disposition of Former Agency assets and properties, the Oversight Board has the authority to approve the proposed actions pursuant to Health and Safety Code Sections 34177(h), 34181(a), and 34181(e) of the Dissolution Act; and

**WHEREAS**, 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.

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency hereby finds, resolves, and determines as follows:

- Section 1:** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2:** The Oversight Board hereby approves of the terms of the DDA.
- Section 3:** The Oversight Board hereby approves of and directs the sale and conveyance of the Site from the City to the Developer in accordance with the terms and conditions set forth in the DDA, for the purpose of the Developer developing the Project.
- Section 4:** The Oversight Board hereby approves the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Site to the Developer 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 Health and Safety Code Section 34177(e).
- Section 5:** The Oversight Board hereby approves of and directs the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA.





## City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

---

March 15, 2012

\*Via Facsimile and Federal Overnight Express Signature Receipt Required\*

Mr. Colton T. Sudberry  
 Sudberry-Palm Avenue LLC  
 c/o Sudberry Properties  
 5465 Morehouse Drive; Suite 260  
 San Diego, California 92121

RE: 9<sup>th</sup> and Palm Avenue Project; Extension of Deadlines Set forth in DDA and Schedule of Performance

Dear Mr. Sudberry:

As you know, Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") and the City of Imperial Beach, a municipal corporation (the "City") are Parties to that certain Disposition and Development Agreement dated for identification purposes as of December 14, 2011 (the "DDA"). The DDA provides, among other matters, for the sale by the City to the Developer of certain real property described in the DDA as the "Site", for the development of the Site by the Developer as a commercial/retail center, and for the development by the Developer of certain off-Site Public Improvements, as collectively described in the DDA as the "Project". Any capitalized term not otherwise defined in herein shall have the meaning ascribed to such term in the DDA.

The DDA and the Schedule of Performance, attached to the DDA as Attachment No. 5, require that certain rights of the Parties be exercised and certain obligations of the Parties be performed on or before certain specified dates or deadlines stated therein. Although the City and the Developer have been working diligently to effectuate the DDA, the Parties mutually recognize and agree that certain dates and deadlines by which such rights shall be exercised and such obligations shall be performed are quickly approaching. To provide each of the Parties additional time within which to exercise their respective rights and perform their respective obligations pursuant to the DDA and the Schedule of Performance, the Parties desire to extend each such date and deadline set forth in the DDA and the Schedule of Performance by an additional nine (9) consecutive months from the date or deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA.

Section 602(b) of the DDA provides in pertinent part as follows: "*Times of performance under this Agreement may . . . be extended in writing by both the City and Developer.*" Thus, an extension of

Mr. Colton T. Sudberry  
Sudberry-Palm Avenue LLC  
March 15, 2012  
Page 2

the dates and deadlines set forth in the DDA and Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the dates or deadlines stated therein may be accomplished by the Parties' execution of this letter.

Section 606(b) of the DDA provides in pertinent part as follows: "*Except as otherwise expressly provided in this Agreement, approvals required of the City shall be deemed granted by the written approval of the City Manager or designee.*" In addition, City Council Resolution No. 2011-7132 in which the City Council of the City approved the DDA provides in pertinent part as follows: "*The City Manager, or designee, is hereby authorized, on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the attachments and provisions of the DDA, sign all documents and take such actions that as City Manager may determine are necessary and appropriate to carry out and implement the purposes of Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the Agreement.*"

Based on the authority provided to the City Manager by Sections 602(b) and 606(b) of the DDA and by the City Council Resolution approving the DDA, as described herein above, the City hereby approves the extension of each date and deadline set forth in the DDA and the Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the applicable date or deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA.

By executing below, you, on behalf of the Developer in the DDA, hereby acknowledge and agree that the Developer mutually approves the extension of each date and deadline set forth in the DDA and the Schedule of Performance by which the Parties shall exercise their respective rights and perform their respective obligations by an additional nine (9) consecutive months from the applicable date and deadline stated therein, including without limitation the deadline set forth in Section 606(c) of the DDA for the Parties to negotiate, complete and approve certain Attachments attached to the DDA and the date of April 1, 2012 set forth in Sections 208(aa) and 512(b) of the DDA, as detailed above, and further acknowledge and agree that the Developer shall continue to be bound by the DDA and all its applicable Attachments, as amended in this letter.

Should you have any questions or comments, please do not hesitate to contact Greg Wade, Assistant City Manager/Community Development Director, at (619) 628-1354.

Mr. Colton T. Sudberry  
Sudberry-Palm Avenue LLC  
March 15, 2012  
Page 3

Sincerely,

CITY OF IMPERIAL BEACH,  
a municipal corporation

Dated: 3/28/12

By: /s/  
Gary Brown  
City Manager

APPROVED AS TO FORM  
City Attorney

By: /s/  
Jennifer Lyon

KANE, BALLMER & BERKMAN  
Special Counsel

By: /s/

[SIGNATURES CONTINUE ON NEXT PAGE]

Mr. Colton T. Sudberry  
Sudberry-Palm Avenue LLC  
March 15, 2012  
Page 4

**CONSENT TO EXTENSION OF EACH DATE AND DEADLINE SET FORTH IN THE DDA AND THE SCHEDULE OF PERFORMANCE BY WHICH THE PARTIES SHALL EXERCISE THEIR RESPECTIVE RIGHTS AND PERFORM THEIR RESPECTIVE OBLIGATIONS BY AN ADDITIONAL NINE (9) CONSECUTIVE MONTHS FROM THE APPLICABLE DATE OR DEADLINE STATED THEREIN AS SET FORTH ABOVE**

The Developer, Sudberry-Palm Avenue, LLC, a California limited liability company, hereby acknowledges, consents, and approves to the extensions stated above and agrees to continue to be bound by the DDA and all its applicable Attachments, as amended herein.

SUSBERRY-PALM AVENUE LLC,  
a California limited liability company

By: SUSBERRY DEVELOPMENT, INC., a  
California corporation, its Manager

Dated: 3/30/12

By: /s/  
Colton T. Sudberry, President

cc: Gerald I. Solomon, Esq.  
Solomon Minton Cardinal LLP  
(via email only: [gis@smclawoffices.com](mailto:gis@smclawoffices.com))

**MEMORANDUM OF AGREEMENT  
REGARDING NINTH STREET IMPROVEMENTS  
AND FUNDING FOR SITE PREPARATION DESIGN WORK**

This Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work (this "Memorandum") is dated for convenience as of August 10, 2012, by and between The City of Imperial Beach ("City") and Sudberry-Palm Avenue LLC, a California limited liability company ("Developer").

1. Disposition and Development Agreement. City and Developer entered into that certain Disposition and Development Agreement dated as of December 14, 2011 (the "DDA"). Any capitalized term that is not otherwise defined in this Memorandum shall have the meaning ascribed to such term in the DDA.

2. Ninth Street Improvements.

a. Pursuant to the DDA, City and Developer agreed, among other things, that Developer would be responsible for the design and construction of off-site public improvements consisting of the resurfacing and improvement of 9<sup>th</sup> Street, between Palm Avenue and Donax Avenue (defined in the DDA as the "Ninth Street Improvements"), the cost of which design and construction work (estimated to be approximately \$200,000) would be the responsibility of and paid for by the City.

b. The Parties have determined and agreed that it is in their mutual best interests, and necessary and appropriate for the implementation of the purposes of the DDA, for the City to assume all responsibility for the design and construction of and payment for the Ninth Street Improvements, without any obligation on the part of the Developer.

c. Therefore, the Parties hereby agree that the DDA and all of the attachments and exhibits attached to and/or to be prepared in accordance with the DDA are hereby amended to delete all references to the Ninth Street Improvements, and that the DDA shall be carried out as if the design, permitting, construction and installation of the Ninth Street Improvements were not a part of the DDA. Provided, however, that Developer shall remain liable for the design, permitting, construction and installation of all Public Improvements described in paragraph a. of Section 219 of the DDA in accordance with the and subject to the terms and conditions of the DDA.

3. Funding for Certain On-Site Design Work.

a. Pursuant to the DDA, City has agreed to pay to or for the benefit of or reimburse Developer for the cost of designing, permitting, constructing and installing the off-site Public Improvements described in paragraph a. of Section 219 of the DDA, not to exceed the sum of \$2,200,000 (the "Public Improvement Funds"), a portion of which (the "Disbursed Funds") has been disbursed previously by City for the preparation of plans for the Public Improvements.

b. The Parties now wish to provide for the use of a portion of the Public Improvement Funds remaining after disbursement of the Disbursed Funds (the "Remaining Public Improvement Funds"), not to exceed the sum of \$100,000, for the preparation of plans for certain on-site improvements relating to the grading of the Site and construction of infrastructure necessary for the development of the Site as provided in the DDA (the "Site Preparation Design Work"). The Site Preparation Design Work is more specifically described in the Scope of Work attached to this Memorandum as Exhibit "A".

c. The obligation of the City to provide funds for (i) the Site Preparation Design Work plus (ii) the planning, permitting, construction and installation of the Public Improvements described in paragraph a. of Section 219 of the DDA, shall in no event exceed the sum of \$2,200,000.

d. The use of up to \$100,000 of the Remaining Public Improvement Funds for the Site Preparation Design Work (the "Site Preparation Design Funds") shall be subject to the following terms and conditions:

(1) The Initial Deposit to be deposited into the Construction Escrow pursuant to paragraph f. of Section 219 of the DDA shall be increased by the sum of \$100,000, so that the Initial Deposit shall consist of (A) the amount by which \$200,000 exceeds the Disbursed Funds, as provided in clause 1 of paragraph f. of Section 219 of the DDA, plus (B) the sum of \$100,000. Consequently, the balance of the Remaining Public Improvement Funds described in clause 3 of paragraph f. of Section 219 shall be \$1,900,000, rather than \$2,000,000.

(2) The disbursement of the Site Preparation Design Funds shall be subject to the conditions precedent for the disbursement of the Initial Deposit set forth in clauses 1 and 2 of paragraph f. of Section 219 of the DDA.

(3) The Site Preparation Design Funds shall be subject to and disbursed in accordance with the Disbursement Agreement to be executed by City, Developer and Escrow Agent. Disbursements of the Site Preparation Design Funds shall be subject to the approval of the City Manager in accordance with the Disbursement Agreement.

(4) City's obligation to provide the Remaining Public Improvement Funds shall be reduced by the amount disbursed for the Site Preparation Design Work. For example, if the Remaining Public Improvement Funds are equal to \$2,166,021 and if \$100,000 is disbursed for the Site Preparation Design Work, the balance available for the Public Improvements shall be \$2,066,021. Provided, however, that Developer shall remain liable for any costs and expenses in excess of the Remaining Public Improvement Funds that are necessary for the completion of the Public Improvements described in paragraph a. of Section 219 of the DDA.

(5) Not later than thirty (30) days after completion of the Site Preparation Design Work and acceptance of the Public Improvements pursuant to paragraph g. of Section 219 of the DDA, Developer shall prepare, execute and deliver to the City a certification of costs ("Cost Certification"), setting forth the final costs of the Site Preparation Design Work and the Public Improvements, including the respective sources of funds used to pay such costs. The Cost Certification shall be subject to review and audit pursuant to the terms of the Disbursement Agreement. In the event the Cost Certification demonstrates that the sum of (i) the Public Improvement Costs paid with Disbursed Funds and/or Remaining Public Improvement Funds plus (ii) the Public Improvement Funds disbursed for the Site Preparation Design Work, is less than \$2,200,000, Developer shall promptly, but in any event within thirty (30) days of written demand by the City, reimburse City for the amount by which the actual final cost is less than \$2,200,000.

e. The Parties have determined and agreed that it is in their mutual best interests, and necessary and appropriate for the implementation of the purposes of the DDA, for the City to advance to Developer the Site Preparation Design Funds as provided in this Section 3.

f. Therefore, the Parties hereby agree that the DDA and all of the attachments and exhibits attached to and/or to be prepared in accordance with the DDA are hereby amended to incorporate the terms and conditions of this Section 3 of this Memorandum relating to funding for the Site Preparation Design Work.

4. Severability. If any term or provision of this Memorandum, the deletion of which would not adversely affect the receipt of any material benefit by either Party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Memorandum shall not be affected thereby and each other term and provision of this Memorandum shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the Parties that in lieu of each clause or provision of this Memorandum that is illegal, invalid, or unenforceable, there be added as a part of this Memorandum an enforceable clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible.

5. Authority for this Memorandum. City Council Resolution No. 2011-7132, which approved the DDA, provides, in part, that the City Manager, or designee, is authorized on behalf of the City, subject to approval as to form by the City Attorney and Special Counsel, to make such changes to the provisions of the DDA as the City Manager may determine are necessary and appropriate to carry out and implement the purposes of the DDA.

6. DDA Remains in Effect. Except as amended by this Memorandum, the DDA remains in full force and effect, including, but not limited to the respective rights and obligations of the Parties with respect to the construction of and payment for the Public Improvements as described in the DDA with the exception of the Ninth Street Improvements.



Executed as of the date set forth above.

SUDBERRY-PALM AVENUE LLC,  
a California limited liability company

By: SUDBERRY DEVELOPMENT, INC., a  
California corporation, its Manager

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Charles J. Todd  
Chief Operating Officer

CITY OF IMPERIAL BEACH

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Gary Brown  
City Manager

APPROVED AS TO FORM  
City Attorney

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Jennifer Lyon

KANE, BALLMER & BERKMAN  
City Special Counsel

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Recording Requested By and  
When Recorded, Mail To:

City of Imperial Beach  
Attn: Gary Brown, City Manager  
825 Imperial Beach Avenue  
Imperial Beach, CA 93550

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ NONE  
Transaction Exempt Pursuant to Revenue &  
Taxation Code §11922

GOVERNMENT BUSINESS  
Document Entitled to Free Recording  
Pursuant to Government Code §§6103 & 27383

**QUITCLAIM DEED**

**San Diego County APNs: 626-250-04; 626-250-05; 626-250-06; 626-250-03**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF IMPERIAL BEACH, a general law city, duly formed, validly existing and in good standing under the laws of the State of California, herein called "Grantor", hereby remises, releases, and quitclaims to the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSION AGENCY, a public entity, duly created, validly existing and in good standing under the laws of the State of California (Part 1 (commencing with Section 33000), Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) of Division 24 of the California Health and Safety Code), herein called "Grantee", all of the Grantor's right, title and interest in the real property described in Exhibit "A" attached hereto and incorporated herein by this reference, hereinafter called the "Property".

(1) The Grantor's interests in certain encumbrances and liens of record as to the Property are held on behalf of and for the benefit of innocent third persons and, therefore, not susceptible to the doctrine of merger with the fee interest held by Grantor and being conveyed by Grantor and shall remain in full force and effect according to their respective terms following the recording of this instrument.

(2) The Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that Grantee, such successors and such assigns, shall develop, maintain, and use the Property in conformance with the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project Area, which was approved and adopted by ordinance of the City Council of the City of Imperial Beach (the "Redevelopment Plan").

(3) The Grantee herein covenants by and for itself, its heirs, executors, administrators, successors, assigns, transferees, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on

account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property herein conveyed, nor shall the Grantee or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

(4) All deeds, leases or contracts made relative to the Property, improvements thereon, or any part thereof, shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

Notwithstanding the paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall also apply to the above paragraph.

2. In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or

(d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

Notwithstanding the above paragraph, with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the above paragraph.

3. In contracts entered into by the agency relating to the sale, transfer, or leasing of land or any interest therein acquired by the agency within any survey area of redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

(5) All conditions, covenants and restrictions contained in this Quitclaim Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Grantor, its successors and assigns, against Grantee, its successors and assigns, to or of the Property conveyed herein or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof.

(6) The conditions contained in paragraphs (3) and (4) of this Quitclaim Deed shall remain in perpetuity, except as otherwise expressly provided herein.

(7) In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and such covenants shall run in favor of

Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law or suit in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant.

(8) No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Quitclaim Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

(9) None of the terms, covenants, agreements or conditions heretofore agreed upon in writing in other instruments between the parties to this Quitclaim Deed with respect to obligations to be performed, kept or observed by Grantee or Grantor in respect to said Property or any part thereof after this conveyance of said Property shall be deemed to be merged with this Quitclaim Deed.

(10) The covenants contained in this Quitclaim Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except for the covenant and condition contained in paragraph 2 of this Quitclaim Deed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf in Imperial Beach, California by the undersigned officer hereunto duly authorized pursuant to the authority conferred by Resolution No. 2012-7243 adopted on August 15, 2012 and Resolution No. 2012-7282 adopted on December 5, 2012 by the City Council of Grantor, and Grantee has caused this instrument to be executed on its behalf in Imperial Beach, California by the undersigned officer hereunto duly authorized pursuant to the authority conferred by Resolution No. SA-12-15 adopted on August 15, 2012 by the Board of Directors of Grantee, by Resolution No. OB-12-10 adopted on August 15, 2012 by the Oversight Board of the Grantee, and by Resolution No. SA-12-19 adopted on December 5, 2012 by the Board of Directors of Grantee.

GRANTOR

Date: \_\_\_\_\_

CITY OF IMPERIAL BEACH,  
a California municipal corporation

By: \_\_\_\_\_  
Gary Brown, City Manager

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Jennifer M. Lyon, City Attorney

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the real property conveyed by this instrument to the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY, a public entity, duly created, validly existing and in good standing under the laws of the State of California (Part 1 (commencing with Section 33000), Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) of Division 24 of the California Health and Safety Code), is hereby accepted by the undersigned officer on behalf of the IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY pursuant to the authority conferred by Resolution No. SA-12-15 adopted on August 15, 2012 by the Board of Directors of Grantee, by Resolution No. OB-12-10 adopted on August 15, 2012 by the Oversight Board of the Grantee, and by Resolution No. SA-12-19 adopted on December 5, 2012 by the Board of Directors of Grantee, and Grantee hereby consents to recordation thereof by its duly authorized officers.

**GRANTEE**

IMPERIAL BEACH REDEVELOPMENT  
AGENCY SUCCESSOR AGENCY,  
a California public entity

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gary Brown, Executive Director

ATTEST:

\_\_\_\_\_  
Jacqueline M. Hald, Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Jennifer M. Lyon, General Counsel

KANE, BALLMER & BERKMAN  
Successor Agency Special Counsel

\_\_\_\_\_  
Kendall D. Berkey, Special Counsel

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of San Diego, City of Imperial Beach, and described as follows:



**STAFF REPORT  
CITY OF IMPERIAL BEACH**

**TO:** HONORABLE MAYOR AND CITY COUNCIL  
**FROM:** CITY MANAGER *MB*  
**MEETING DATE:** DECEMBER 5, 2012  
**ORIGINATING DEPT:** CITY MANAGER  
**SUBJECT:** REQUEST BY MEMBER OF THE CITY COUNCIL TO  
PLACE AN ITEM ON A CITY COUNCIL AGENDA

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**BACKGROUND:**

On January 18, 2012, City Council approved City Council Policy No. 116, which established guidelines for how a member of the City Council may place an item on a City Council agenda. City Council Policy 116 states:

*"For any item to be placed on the agenda by any member of the City Council*

- a. Submit a written request to the City Manager stating the matter to be discussed.*
- b. City Manager places the item on the City Council agenda to see if a majority of the City Council wishes to discuss the matter at a future meeting.*
- c. If a majority of the City Council wishes to discuss the matter at a future meeting, the City Manager will place it on a future agenda after staff work, if any, is completed."*

**DISCUSSION:**

On November 30, 2012, Councilmember Spriggs submitted a written request to the City Manager to have the City Council consider a Seacoast Drive Commercial zone lighting study (see attachment 1).

**CITY MANAGER'S RECOMMENDATION:**

It is recommended that the City Council:

1. Consider Councilmember Spriggs' request to place an item on a City Council agenda and
2. Decide if the City Manager should place the item on a future meeting agenda after staff work, if any, is completed.

**Attachments:**

1. E-mail correspondence from Councilmember Spriggs requesting Council agenda item
2. City Council Policy 116 – Request by Member of the City Council to Place an Item on a City Council Agenda

From: Edward Spriggs <[ejspriggs@yahoo.com](mailto:ejspriggs@yahoo.com)>  
Subject: New Agenda Item  
To: "Gary Brown" <[gbrown@CityofIB.org](mailto:gbrown@CityofIB.org)>  
Date: Friday, November 30, 2012, 5:13 PM

Hi Gary,

Please add the following agenda item to this coming Wednesday's agenda:

Seacoast Drive commercial zone lighting study: (a) that current lighting be reviewed by a pedestrian lighting expert to determine whether and what improvements or changes are needed within the Seacoast Drive Street Improvement project to enhance night time walkability and ambience in order to increase pedestrian night time traffic and that specific lighting options and cost estimates be submitted to Council within 30 days for Council consideration; (b) that the Seacoast Drive Street Improvement Project not be terminated nor additional Project funds in any amount added to the current contracts or reprogrammed to other projects or uses until Council has acted on the above recommendations.

Best regards,

Ed

<b>CITY OF IMPERIAL BEACH COUNCIL POLICY</b>		
<b>SUBJECT: REQUEST BY MEMBER OF THE CITY COUNCIL TO PLACE AN ITEM ON A CITY COUNCIL AGENDA</b>	<b>POLICY NUMBER: 116</b>	<b>PAGE  1 OF1</b>
<b>ADOPTED BY: Resolution No. 2012-7142</b>	<b>DATED: January 18, 2012</b>	

**PURPOSE**

To provide guidelines on placing items on the City Council agenda by members of the City Council.

**POLICY**

1. Any member of the City Council may request that an item be placed on a future City Council agenda for discussion and possible action.
2. For any item to be placed on the agenda by any member of the City Council
  - a. Submit a written request to the City Manager stating the matter to be discussed.
  - b. City Manager places the item on the City Council agenda to see if a majority of the City Council wishes to discuss the matter at a future meeting.
  - c. If a majority of the City Council wishes to discuss the matter at a future meeting, the City Manager will place it on a future agenda after staff work, if any, is completed.