

A G E N D A

REGULAR MEETING OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE CITY OF SUISUN CITY REDEVELOPMENT AGENCY

FRIDAY, JUNE 15, 2012

2:00 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

(Next Board Res. No. OB2012 – 03)

ROLL CALL

Board Members

PUBLIC COMMENT

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

CONSENT CALENDAR

Consent calendar items requiring little or no discussion may be acted upon with one motion.

GENERAL BUSINESS

- 1) Adoption of Oversight Board Resolution No. OB2012-__: Approving the Administrative Budget for the Period Ending December 31, 2012 – (Garben)
- 2) Adoption of Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Lease Payments Received by the Former Redevelopment Agency Associated with the 333 Sunset Office Development – (Garben)
- 3) Adoption of Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Costs Incurred Associated with the Harbor Center Street Extension Project – (Garben)
- 4) Adoption of Oversight Board Resolution No. OB2012-__: Approving a Repayment Schedule Associated with the Civic Center COP Reimbursement Agreement – (Garben)

REPORTS: *(Informational items only.)*

- 5) Staff
- 6) Chair/Boardmembers

ADJOURNMENT

A complete packet of information containing Staff Reports and exhibits related to each item is available for public review at least 72 hours prior to a Board Meeting or, in the event that it is delivered to the Boardmembers less than 72 hours prior to a Board Meeting, as soon as it is so delivered. The packet is available for review in the Suisun City Manager's Office during normal business hours, and online at www.suisun.com/Oversight-Board.html.

AGENDA TRANSMITTAL

MEETING DATE: June 15, 2012

OVERSIGHT BOARD AGENDA ITEM: Adoption of Oversight Board Resolution No. OB2012-__: Approving the Administrative Budget for the Period Ending December 31, 2012.

FISCAL IMPACT: The administrative budget consists of revenues and expenses within the \$125,000 administrative cost allowance provided pursuant to AB 26 for the period ending December 31, 2012.

IMPACT ON PASS THROUGHES TO OTHER TAXING ENTITIES: This item has no impacts to the existing pass-through payments to other affected taxing entities.

BACKGROUND: Pursuant to Section 34177(j) of AB 26, the Successor Agency is required to prepare and submit a proposed administrative budget to the Oversight Board for its approval. The administrative budget must include the following pursuant to AB 26:

- Estimated amounts for Successor Agency administrative costs for the upcoming six-month fiscal period
 - Identify proposed sources of payment
- Proposals for arrangements of administrative and operational services provided by the City.

Pursuant to Section 34171(b) of AB 26, an administrative cost allowance is provided to the Successor Agency. This allowance comes from property tax revenues and is subject to approval of the Oversight Board. The administrative cost allowance for FY 2011-12 is up to 5% of property tax allocated to the Successor Agency and 3% of the property tax allocated to the Redevelopment Obligation Retirement Fund for each fiscal year thereafter. There is a provision that provides the administrative cost allowance shall not be less than \$250,000 for any fiscal year unless a lesser amount is agreed to by the Successor Agency.

Pursuant to Form B of the ROPS for the period ending December 31, 2012, the Successor Agency is expecting to receive a property tax allocation of \$4,412,822 for the first half of FY 2012-13. Taking 3% of the \$4,412,822 would result in an administrative cost allowance of \$132,376. However, the amount on the ROPS for the second half of the fiscal year is anticipated to be far less (closer to the \$1,339,543 listed on Form B of the ROPS for the period January 1 through June 30, 2012). Thus, the minimum administrative cost allowance of 50% of \$250,000 is estimated for the first six month period of FY 2012-13. The State Department of Finance (the "DOF") has indicated the minimum \$125,000 is the appropriate allocation in the case of Suisun City's Successor Agency for the first half of FY 2012-13.

The Oversight Board requested additional information regarding benefit expenses and cost allocation expenses.

STAFF REPORT: This administrative budget is for the period of July 1, 2012, through December 31, 2012. An administrative budget must be prepared by the Successor Agency for every six-month period and submitted to the Oversight Board for approval.

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, Executive Director

As previously mentioned, the minimum administrative cost allowance of \$125,000 for the first half of the fiscal year is estimated for purposes of budgeting. This budget was developed using the same principals as the previous administrative budget adopted by the Oversight Board on May 3, 2012.

The administrative budget includes proposed staffing of 1.14 full-time equivalent employees (\$79,100), which is approximately 13.8% of the 8.24 full time equivalent employees (FTE) employed by the Redevelopment Agency prior to dissolution. The types of positions include management, accounting and general administrative. Attachment 1 provides a detailed breakdown of proposed staffing starting July 1, 2012. It is important to note the Successor Agency has proposed to reduce staffing levels by 1.71 FTEs compared to staffing levels from the period of February 1, 2012 through June 30, 2012.

The Oversight Board asked for clarification on the benefits calculation. The benefits include the following:

- CalPERS retirement contributions (19.3% of salary - pro-rated by the portion of the position allocated to the Successor Agency)
- Health insurance benefits of up to \$20,500 per employee (pro-rated by the portion of the position allocated to the Successor Agency)
- Misc. benefits consist of a City match of deferred compensation of up to \$3,640 per year (pro-rated by the portion of the position allocated to the Successor Agency) and car allowance of up to \$4,800 per year (pro-rated by the portion of the position allocated to the Successor Agency)

The benefits represent approximately 43% of the salary cost in the proposed budget. Staff also surveyed seven Successor Agencies throughout Northern California and all include benefits within the Successor Agency administrative budget.

With staffing proposed at 13.8% of the former Redevelopment Agency's employment levels, the Successor Agency's contribution to cost allocation charges was reduced accordingly to \$22,100 from the \$315,600 adopted as part of the former Redevelopment Agency's FY 2011-12 budget. Cost allocation charges are based on a Cost Allocation Plan prepared by Revenue & Cost Specialists, LLC, and include the following:

- Costs to use City facilities
- Costs to use City equipment
- Utility costs
- Organizational overhead costs (personnel services, city administration, etc.)
- Information Technology costs (computers, network maintenance, etc.)
- Risk Management costs (insurance claims and premiums)

In order to test the reasonableness of the cost allocation charges, staff surveyed other Successor Agencies, and compared cost allocation charges to total employee costs. The proposed budget includes a cost allocation charge of \$22,100, representing approximately 27.9% of the total proposed employee costs of \$79,100. There are seven successor agencies from which we were able to obtain relevant and valid information to compare against. The percentage of cost allocation charges to total employee costs ranged from approximately 0% to 82.5%. Eliminating the two outlying numbers at the high and low end reduces the range to between 14.2% and 52.7%. Thus, the proposed cost allocation expense is within the lower end of the range when compared to other Successor Agencies.

The remaining budget includes the following line items and associated costs:

- Successor Agency Legal \$18,000
- Oversight Board Legal \$1,000
- Services/Supplies \$4,800

Attachment 2 provides a summary explanation of each of the aforementioned line items.

RECOMMENDATION: Adopt of Oversight Board Resolution No. OB2012-__: Approving the Administrative Budget for the Period Ending to December 31, 2012.

ATTACHMENTS:

1. Successor Agency Staffing Summary 7-1-12 through 12-31-12
2. Successor Agency Admin Cost Summary
3. Successor Agency Cost Allocation Survey
4. Oversight Board Resolution No. OB2012-__: Approving the Administrative Budget for the Period Ending to December 31, 2012

**Suisun City Successor Agency
Staffing Summary**

Job Title	FTE
Account Clerk I/II-II	0.05
Accountant	0.15
Assistant City Manager/Admin. Services	0.15
City Manager	0.19
Economic Development Director	0.25
Marketing Manager	0.05
Sec to City Mgr/Dep City Clerk	0.10
Senior Accountant	0.15
Assistant/Associate Planner-Associate	0.05
Total Full Time Equivalent Staffing	1.14

**Suisun City Successor Agency
Admin Budget Summary**

Sources

Administrative Cost Allowance	\$125,000
Total Sources	\$125,000

Uses

Employee Costs - Salary	\$54,000	
Employee Costs - Benefits	\$23,100	0.428
Employee Costs - Taxes	\$2,000	
Legal - Successor Agency	\$18,000	
Legal - Oversight Board	\$1,000	
Travel & Training	\$0	
Phone Service/Internet	\$2,400	
Postage/Shipping	\$200	
Printing/Copier Expense	\$2,000	
Other Professional Services	\$0	
Office Supplies	\$200	
Cost Allocation	\$20,700	
Info Tech	\$800	
Risk Mgmt	\$600	
Total Uses	\$125,000	

Successor Agency Cost Allocation Survey

City	Total Personnel (defined)	Cost Allocation (Defined)	Total Personnel Costs	Total Cost Allocation Charges	Cost Allocation as Percentage of Personnel
Davis	Salary & Benefits	Successor Agency Overhead	\$786,806	\$121,789	15.5%
Fremont	Aggregate Staff Costs	Overhead (Fleet, IT, Ins., Etc)	\$226,170	\$32,129	14.2%
Novato	Salary & benefits	General Admin Overhead (HR, IT, office space, insurance, etc)	\$182,039	\$65,473	36.0%
Vacaville	Salaries/Benefits	General Liability, Cost Allocation	\$208,655	\$79,000	37.9%
Fairfield	Salaries, Health, pension, etc.	None	\$125,000	\$0	0.0%
Santa Rosa	Salary & Benefits	Overhead - CAO, Finance, insurance	\$136,058	\$112,247	82.5%
Sonoma	Wages & Benefits	Mgmt Info Svs, Building Maintenance, Overhead Support	\$172,597	\$90,888	52.7%
			\$3,401,445	\$1,506,027	44.3%
Suisun City	Salaries, Benefits, Payroll Tax	Cost Allocation, IT Charge, Risk Mgmt	\$79,100	\$22,100	27.9%

RESOLUTION NO. OB 2012 - __

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY APPROVING THE ADMINISTRATIVE BUDGET FOR THE PERIOD ENDING DECEMBER 31, 2012

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, companion bills AB 26 X1 (AB 26) and AB 27 X1 (AB 27), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case of *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of AB 26 and invalidated AB 27; and

WHEREAS, the Court’s decision results in the implementation of AB 26, which dissolves all redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City is, by operation of law, the Successor Agency (the “Agency”) to the Redevelopment Agency for purposes of winding down the Redevelopment Agency under AB 26; and

WHEREAS, Health & Safety Code Section 34171(a), (b), and 34177 (j) require the Oversight Board to approve an Administrative Budget for administrative costs of the Successor Agency.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency does resolve as follows:

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. The administrative budget for the Successor Agency for the period ending December 31, 2012 is hereby approved.

Section 3. The Successor Agency Executive Director or designee is authorized to take all actions necessary to implement this Resolution.

PASSED AND ADOPTED at a regular meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Friday, the 15th of June, 2012, by the following vote:

AYES:	BOARDMEMBERS:	_____
NOES:	BOARDMEMBERS:	_____
ABSENT:	BOARDMEMBERS:	_____
ABSTAIN:	BOARDMEMBERS:	_____

WITNESS my hand and the seal of the City of Suisun City this 15th of June, 2012.

Linda Hobson, CMC
Secretary

AGENDA TRANSMITTAL

MEETING DATE: June 15, 2012

OVERSIGHT BOARD AGENDA ITEM: Adoption of Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Lease Payments Received by the Former Redevelopment Agency Associated with the 333 Sunset Office Development

FISCAL IMPACT: There is no fiscal impact to the Oversight Board associated with this item.

IMPACT ON PASS-THROUGHS TO OTHER TAXING ENTITIES: This item has no impacts to the existing pass-through payments to other affected taxing entities. A complete analysis was provided in the June 1 staff report (provided as Attachment 1). The analysis was updated pursuant to the request of the Oversight Board to illustrate the residual tax increment available to affected taxing entities should the Successor Agency not re-enter into agreements relating to the 333 Sunset Ground Lease and the Harbor Center Street Extension (Attachments 2 & 3).

BACKGROUND: At the April 13, 2012, Oversight Board Meeting, it was noted that several items listed on the Recognized Obligation Payment schedule, including the 333 Sunset Ground Lease Reimbursements, were verbally determined by the State Department of Finance (the “DOF”) to not be enforceable obligations pursuant to AB 26. Since that time, the Successor Agency has received written confirmation of the DOF’s findings, and the DOF has maintained its position that the 333 Sunset Lease Reimbursements are not an enforceable obligation.

Pursuant to AB 26, Health & Safety Code Section 34178(b)(2) states that a written agreement between a redevelopment agency and the city, county, or city and county that created it that provided loans or other startup funds for the redevelopment agency that were entered into within two years of the formation of the redevelopment agency is not invalid. The 333 Sunset Ground Lease Reimbursements are not considered an enforceable obligation, even though the property transfer took place and the ground lease was entered into within two years of the Redevelopment Plan being amended and restated.

Nonetheless, Section 34178(a) of AB 26 provides the following:

“...a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board.”

Relative to this authority within AB 26, the Oversight Board was presented with an informational item at its meeting on June 1, 2012, that provided the following information (the June 1 staff report is provided as Attachment 1):

- Legal considerations and authority for authorizing the Successor Agency to reenter into agreements with the City
- The financial impacts on the City if certain agreements are not reentered

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, Executive Director

- The impact on the existing pass-through payments to other affected taxing entities if certain agreements are reentered between the Successor Agency and the City.

At its June 1, 2012, meeting, the Oversight Board requested that if the Successor Agency wished to enter or reenter into such an agreement with the City, then a formal request by resolution should be made by the Successor Agency. At its meeting on June 12, 2012, the Successor Agency is considering a resolution to formally request the Oversight Board to consider authorizing the Successor Agency to enter into an agreement that would honor the remaining ground lease repayments to the City associated with the 333 Sunset Ground Lease transactions. As of this writing, the Successor Agency had not yet considered the resolution making the formal request of the Oversight Board. This staff report is written on the condition that the Successor Agency adopts said resolution.

STAFF REPORT: As previously mentioned, the 333 Sunset Ground Lease Reimbursement, per the State Department of Finance (the “DOF”), is not considered an enforceable obligation, even though the property transfer took place and the ground lease was entered into within two years of the Redevelopment Plan being amended and restated.

The 333 Sunset Ground Lease Reimbursement consists of the repayment to the City for ground lease payments received by the Redevelopment Agency for land transferred to the Agency on October 11, 1989, *with no consideration to the City*. This transfer occurred within two years of the formation of the Amended Project Area, which occurred on July 18, 1989.

The Agency subsequently entered into a ground lease with a developer in February 1991. The ground lease resulted in the Agency being paid lease payments instead of the City, which should have been the recipient of such payments recognizing that the City received no compensation from the Agency at the time the land was transferred.

The following provides a fiscal overview of the 333 Sunset Ground Lease:

- Total Ground Lease Payments Made to Agency - \$666,470
 - Ground Lease Payments were made to Agency between April 1991 and June 2003
- The former redevelopment agency has reimbursed the City for a total of \$341,390 to date
 - Payments have been made annually (\$48,770 since FY 2004-05)
- City expected the remaining \$325,080 to be repaid over the next 7 fiscal years.

The Successor Agency is proposing to enter into an agreement with the City in order for the City to continue to receive simple reimbursement for actual lease payments made to the former redevelopment agency. The lease repayments would not include an interest component, which is consistent with past practice. The proposed schedule of the reimbursement payments is provided in the table below, and is based on a payment schedule developed as part of the budget adopted for FY 2004-05:

333 Sunset Ground Lease Repayment Schedule	
DATE	PROPOSED PAYMENT AMOUNT
Year 1 (February 2013)	\$48,770
Year 2 (February 2014)	\$48,770
Year 3 (February 2015)	\$48,770
Year 4 (February 2016)	\$48,770
Year 5 (February 2017)	\$48,770
Year 6 (February 2018)	\$48,770
Year 7 (February 2019)	\$32,460
TOTAL	\$325,080

If the City is not reimbursed for the payments associated with the 333 Sunset Lease Repayments, it would represent another \$48,070 reduction to the City's general fund revenues. This amount represents approximately 1% of city salaries (organization wide).

If the City is reimbursed pursuant to the proposed repayment schedule, \$48,770 less would be available for distribution to other affected taxing entities over the next six years, with \$32,460 less available in year seven. For example the County would stand to receive approximately 25% of the proposed \$325,080 repayment to the City over the next seven years. However, as illustrated in Attachment 2, even if the reimbursement agreements for the 333 Sunset Ground Lease Repayment and the Harbor Center Street Extension project are authorized, and assessed values continue to decline over the next two years, then remain flat for a year, and then experience a modest increase of 2% in years 4 and 5, the affected taxing entities would still stand to receive an estimated total of \$1.44 million over the next five years as a result of the elimination of the former redevelopment agency. As illustrated in Attachment 3, under the same scenario whereby agreements for the 333 Sunset Ground Lease Repayment and the Harbor Center Street Extension project are authorized, with slightly more aggressive growth assumptions for assessed values (3% decline in year 1, flat in years 2 and 3, 2% increase in year 4 and a 3% increase in year 5), the affected taxing entities would still stand to receive an estimated total of \$2.1 million over the next five years as a result of the elimination of the former redevelopment agency.

To proceed, the Successor Agency is required to have Oversight Board authorization to enter into an agreement approving a repayment schedule for the remaining payments associated with the 333 Sunset Ground Lease reimbursement to the City. The agreement is provided as Attachment 4. Adopting this resolution would authorize the Successor Agency to enter into such an agreement.

RECOMMENDATION: Adopt Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Lease Payments Received by the Former Redevelopment Agency Associated with the 333 Sunset Office Development

ATTACHMENTS:

1. Attachment 1 – June 1 Informational Item Staff Report
2. Attachment 2 – Updated Projected Revenue/Expense Estimates (Base Model)
3. Attachment 3 – Updated Projected Revenue/Expense Estimates (Aggressive Model)
4. Attachment 4 – Ground Lease Repayment Agreement for 333 Sunset Property
5. Attachment 5 –Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Lease Payments Received by the Former Redevelopment Agency Associated with the 333 Sunset Office Development

AGENDA TRANSMITTAL

MEETING DATE: June 1, 2012

OVERSIGHT BOARD AGENDA ITEM: Informational Item – Legal Authority Under ABX1 26 (AB 26) for the Oversight Board to Authorize the Successor Agency to Reenter into Certain Agreements Between the Successor Agency and the City of Suisun City, including an Analysis of the Impact of “Keeping Whole” the Other Taxing Entities of Such Decisions.

FISCAL IMPACT: No fiscal impact at this time. This item is presented for informational purposes.

IMPACT ON PASS-THROUGHS TO OTHER TAXING ENTITIES: This item has no impacts to the existing pass-through payments to other affected taxing entities. See staff report for comprehensive sensitivity analysis.

BACKGROUND: At the April 13, 2012, Oversight Board Meeting, it was noted that several items listed on the Recognized Obligation Payment schedule were verbally determined by the State Department of Finance to not be enforceable obligations pursuant to AB 26. Specifically, the 333 Sunset Lease Reimbursements and the Civic Center Certificate of Participation Reimbursement Agreement. Since that time, we have received written confirmation of the DOF’s findings, and it has maintained its position that the 333 Sunset Lease Reimbursements are not an enforceable obligation. However, it has since been determined by the DOF that the Civic Center COP Reimbursement Agreement is an enforceable obligation.

Pursuant to AB 26, any agreements, contracts or arrangement between a city and its redevelopment agency are not valid and do not bind the Successor Agency with the following exceptions:

1. Any duly authorized written agreement between the city and the redevelopment agency entered into at the time of issuance, but prior to December 31, 2010, solely for the purpose of securing or repaying indebtedness obligations to third parties (as an example, the Civic Center COP Reimbursement Agreement meets this criteria); and
2. A written agreement between the city and redevelopment agency that was entered into within two years of the formation of the redevelopment agency.

However, Section 34178(a) of AB 26 provides the following:

“...a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board.”

Relative to this authority within AB1x26, the purpose of this informational item is to provide the Oversight Board with the following information:

- Legal considerations and authority for authorizing the Successor Agency to reenter into agreements with the City
- The financial impacts on the City if certain agreements are not reentered

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, Executive Director

- The impact on the existing pass-through payments to other affected taxing entities if certain agreements are reentered between the Successor Agency and the City.

Each of these items is discussed below.

STAFF REPORT:

At the Oversight Board meeting on June 15, 2012, staff will ask/recommend the Oversight Board to authorize the Successor Agency to reenter into two agreements with the City of Suisun City. These include specifically:

- 333 Sunset Ground Lease Reimbursement
- Harbor Center Road Extension Reimbursement.

To facilitate the Oversight Board's consideration of this request, this item is presented for information and discussion to ensure the Board has the information it needs to consider this request. Impacts to the City, impacts to the existing pass-throughs to the other affected taxing entities, and the legal authority of the Oversight Board to authorize such agreements is contained herein. An overview of the 333 Sunset Ground Lease Reimbursement and the Harbor Center Road Extension Reimbursement is also provided.

Transaction Summaries

333 Sunset Lease Reimbursement

As previously mentioned, the 333 Sunset Ground Lease Reimbursement, per the State Department of Finance (the "DOF"), is not considered an enforceable obligation, even though the property transfer took place and the ground lease was entered into within two years of the Redevelopment Plan being amended and restated.

The 333 Sunset Ground Lease Reimbursement consists of the repayment to the City for ground lease payments received by the Redevelopment Agency for land transferred to the Agency on October 11, 1989 *with no consideration to the City*. This transfer occurred within two years of the formation of the Amended Project Area, which occurred on July 18, 1989.

The Agency subsequently entered into a ground lease with a developer in February 1991. The ground lease resulted in the Agency being paid lease payments instead of the City, which should've been the recipient of such payments recognizing that the City received no compensation from the Agency at the time the land was transferred.

Pursuant to AB 26, Health & Safety Code Section 34178(b)(2) states that a written agreement between a redevelopment agency and the city, county, or city and county that created it that provided loans or other startup funds for the redevelopment agency that were entered into within two years of the formation of the redevelopment agency is not invalid. However, the State DOF's interpretation in denying this reimbursement agreement appears to be based not on when the property was transferred from the City to the Agency in the anticipation of future compensation, which did take place within two years, but rather when the ground lease payments were initiated, which fell within three years of when the Project Area was created. Needless to say, there are already lawsuits being filed from other jurisdictions questioning the legality of this arbitrary two year period of time.

The following provides an overview from a financial perspective with regard to this item:

- Total Ground Lease Payments Made to Agency - \$666,470
 - Ground Lease Payments were made to Agency between April 1991 and June 2003

- Agency has reimbursed the City for a total of \$341,390 to date
 - Payments have been made annually (\$48,770 since FY 2004-05)
- City expected the remaining \$325,080 to be repaid over the next 7 fiscal years.

The payments that historically have been made to the City, and which are hoped will be authorized to continue, are a simple reimbursement for actual lease payments, and do not include an interest component.

Harbor Center Street Extension Reimbursement

Between the years of 2007 and 2009, the City of Suisun City acquired the right of way and constructed the improvements necessary to complete the Harbor Center Street Extension project at a cost of approximately \$2,500,000. The completion of this project led to the development of Suisun City's first hotel in over 50 years, and a critical element of our redevelopment plan to generate ongoing revenues for the City.

In June 2009, the City and former Redevelopment Agency adopted resolutions providing for reimbursement of the costs incurred by the City to complete the Harbor Center Street Extension. At that time, the City and the Agency adopted resolutions authorizing the repayment as a lump sum amount of \$2,500,000 during FY 2009-10. However, given the continued declines in assessed values resulting in lower tax increment revenues to the Redevelopment Agency, it was decided through the budgeting process to reimburse the City over a four-year period. By allowing this obligation to be reimbursed over a four-year period, the Agency was able to ensure it had sufficient annual working capital, while the City was able to ensure it had the necessary annual reserves as a result of the payment schedule. A win-win proposition for all involved. As with the 333 Sunset Lease, this transaction was a simple reimbursement for actual costs incurred without any interest factored into the arrangement.

Ultimately, this obligation was paid off in March 2011, when the Agency paid the outstanding balance of \$1.5 million to the City. Three months later in June 2011, AB26 was passed by the Legislature and signed into law by the Governor. Pursuant to AB26, however, payments made between the Agency and the City retroactively to January 1, 2011 are deemed invalid and subject to reversal.

Recognizing the importance of this revenue to the City's General Fund (which is discussed in more detail subsequently in this staff report), staff is raising this issue proactively with the Oversight Board. From the City's perspective, this is a straight reimbursement that was authorized well before the implementation of AB26. As can be seen by the nature of this transaction, it wasn't something that was created to subvert the interests of the State (this project is fully consistent with the intention of redevelopment) nor was it used as a vehicle to increase revenues transferred from the Agency to the City (no interest was ever contemplated in this transfer/reimbursement agreement.)

As with the 333 Sunset Lease Reimbursement Agreement, the legality of the AB26 provisions that raise questions about this reimbursement agreement (i.e., creating laws that retroactively invalidate valid city/agency reimbursements, as well as the arbitrary two year provision) are being challenged in the courts at this time.

Legal Authority and Other Considerations

A letter from legal counsel to the Successor Agency providing a detailed explanation regarding the authority of the Oversight Board to authorize the Successor Agency to enter into such agreements with the City is provided as Attachment 1.

Further, the California Attorney General has represented in court that Health & Safety Code §§ 34171(d)(2)(C) and 34180(k) are not intended to invalidate any contracts that are legal under existing law. Specifically, on January 27, 2012, Ross Moody, Deputy Attorney General, acknowledged in open court in the case of City of Cerritos v. State of California, Sacramento County Superior Court, Case No. 34-2011-80000952, that "to the extent [a] city has entered into indebtedness or contract [with its redevelopment agency] for those same purposes [i.e. in reliance upon being repaid with tax increment revenues] there is no reason that AB 26 would invalidate those contracts." (Reporter's Transcript, at pp. 61-65.)

Moreover, Proposition 1A prohibits the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any fiscal year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues amongst local governments within a county must be approved by two-thirds of both houses of the Legislature. (Cal. Const. Art. XIII, § 25.5(a)(3).) AB 26 was not approved by a two-thirds vote in accordance with Proposition 1A.

The application of Proposition 1A to AB 26 is currently being litigated, along with other legal arguments concerning AB 26, in the above-referenced Cerritos case in the Sacramento Superior Court. Two additional cases were filed last week in Sacramento Superior Court challenging AB 26.

Thus, the validity of AB 26 is currently being litigated in court. *Preserving the status quo until the court resolves this matter is the best course of action given the uncertain set of circumstances.* By reentering into the reimbursement agreements, the Oversight Board is merely preserving the status quo before AB 26 went into effect and allowing the courts to resolve the current uncertainty in AB 26 and its application to the matters at issue here.

Impacts to the City of NOT Re-Entering into These Two Agreements

The City of Suisun City has been impacted greatly by the severe economic downturn of the past five years, as have all other governmental entities. Suisun City has navigated this downturn thus far by implementing cost saving measures such as:

- A hiring freeze that has resulted in 18 current vacancies (a total workforce reduction of nearly 18%)
- A 5% reduction in employee salaries, organization wide (while recognizing that the City's employee salaries are generally significantly below area cities)
- A total of \$2 million in reductions for FY2012-13 out of a prior year GF budget of roughly \$10 million; of these reductions, \$1.7 million is attributed to the elimination redevelopment
- These reductions are on top of significant cuts and reductions made over the past three to four years as assessed values have continued to decline in the realm of 35% to 40%.

The City has made cuts in every area, including reductions to our police officer force of nearly 17%; when considering all sworn personnel (including Commander and Chief), the reductions are nearly 13%.

Additionally, the City is operating pursuant to a “bridging strategy,” which essentially is utilizing one-time reserves of approximately \$1.1 million annually to balance the City’s general fund budget until a Wal-mart project in the development pipeline comes to fruition. This bridging strategy was carefully developed and is closely monitored. It was made possible by the strategic disposition of certain real property assets held by the City. The strategy is holding true with the Wal-mart project expected to break ground this summer, and be open for business in spring 2014. If this project were not to happen for whatever reason, the City’s General Fund would have another hole of over 10% to fill.

Given all of the above, even though the City was able to formulate a balanced budget for FY2012-13, given the uncertainties surrounding the implementation of AB 26, the precipitous decline in revenue streams available to the City, and a relentlessly depressed economic environment, the City of Suisun City is “on the ropes.”

The impacts on the City of not reentering into the two agreements of question are summarized below, and are NOT ASSUMED in the discussion above.

Fiscal Impacts Associated with 333 Sunset Lease

If the City is not reimbursed for the payments associated with the 333 Sunset Lease Repayments, it would represent another \$48,070 reduction to the City’s general fund revenues. This amount represents approximately 1% of city salaries (organization wide).

Fiscal Impacts Associated with Harbor Center Extension

If the \$1,500,000 of reimbursements made to the City prior to January 1, 2011 are reversed and not repaid, the City’s general fund reserve would be depleted. The \$1,500,000 currently represents more than 62% of the City’s emergency reserves. If this money is not repaid to the City, emergency reserves would drop to \$894,000.

Impacts on Pass-Through Payments to Other Affected Taxing Entities

At the Oversight Board meetings, it has been made clear the Board Members are interested in ensuring that the other affected taxing entities are not negatively impacted by decisions made by the Board relative to maintaining the status quo of pass-through revenues. The other taxing entities include, among others, the county, community college district, school district and water authority.

In order to determine whether or not re-entering into the two agreements that are the subject of this report (333 Sunset and Harbor Center) would negatively impact or put at risk the pass-through payments received by the other affected taxing entities, staff has provided a forecast estimate of revenues and expenses over the next five years (Attachment 2 and Attachment 3). The bottom-line is:

1. Reentering into these two agreements, even assuming further reductions in assessed values, does not negatively impact the existing pass-through payments made to the other affected taxing entities.
2. Additional funds in the realm of \$1.4 million to \$2.1 million are projected to be available for distribution to the other affected taxing entities - beyond the pass-through payments currently anticipated – over the next five years.

In the first scenario (Attachment 2), revenue projections are based on a forecast of tax increment revenue that includes continued declines in assessed values over the next two years, no growth in the third year, and 2% growth in years four and five. A one-time revenue is also included in year three, as the Agency’s Equity Participation in the One Harbor Center office building is callable,

and represents a minimum revenue of \$500,000. There are other assets of the Agency that will generate additional revenue, however, none were included for purposes of this analysis as the timing or amount of the revenue streams are relatively uncertain. This approach makes the analysis more conservative.

Expense projections over the same five-year period include debt service payments required pursuant to existing agreements, pass-through payments to other affected taxing entities pursuant to existing agreements, administrative cost estimates for the County and State with regard to implementing AB 26, and administrative costs to the Successor Agency for implementing AB 26. Re-payment schedules for both the 333 Sunset Lease and the Harbor Center reimbursement have likewise been developed and included in the analysis.

Based on the aforementioned factors, the projections show there would be additional funds to distribute in each of the next five years above and beyond existing pass-through payments totaling more than \$1.4 million even after allowing the Successor Agency to reenter into the reimbursement agreements.

A second scenario was also developed (Attachment 3), utilizing more aggressive assessed value projections (decline in assessed values of 3% in year 1, no growth in the second and third year, and 2% growth in year four and 3% growth in year five), and the same expense projections. This scenario reveals there would be additional funds of approximately \$2.1 million over the next five years provided to other affected taxing entities.

Thus, the existing pass-through agreements to other affected taxing entities are able to be honored assuming the reimbursement agreements with the City are implemented.

Next Steps

Based on discussion and input of the Oversight Board, staff plans to bring back for Board consideration proposed terms of the reimbursement agreements at the Oversight Board meeting on June 15, 2012, along with formal authorization from the Oversight Board to allow the Successor Agency to enter into such agreements. Any additional information requested by the Board to help in considering these requests will likewise be compiled.

RECOMMENDATION: Receive the presentation, discuss the item, and provide staff with direction and feedback.

ATTACHMENTS:

1. Attachment 1 – Letter from Aleshire & Wynder
2. Attachment 2 – Projected Revenue/Expense Estimates Base Model
3. Attachment 3 – Projected Revenue/Expense Estimates (Aggressive Model)



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May 25, 2012

Ms. Suzanne Bragdon
City Manager
Mr. Jason Garben
Economic Development Director
City of Suisun City
701 Civic Center Blvd.
Suisun City, CA 94585

Dear Suzanne and Jason:

This letter provides you with the legal authority supporting our opinion, as your City Attorney, that the Oversight Board can legally enter and reenter into various obligations pursuant to ABx1 26 that have recently been challenged by the California Department of Finance (“DOF”).

Specifically, even if an existing City/RDA agreement is for some reason deemed to be invalid and not binding by DOF because DOF formed the opinion that the agreement does not meet the specific criteria to be an “enforceable obligation” under ABx1 26, the Oversight Board expressly has the authority under ABx1 26 to allow the City to “enter or reenter” into these very same agreements, as an “enforceable obligation” under Health & Safety Code § 34178(a). That section provides:

“(a) Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board.” (emphasis added).

Similarly, Section 34180 provides that “[a]ll of the following successor agency actions shall first be approved by the oversight board”, including subpart (h): “[a] request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding.”

Suzanne Bragdon
Jason Garben
May 25, 2012
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No qualification or limitation is provided on the face of these subsections of ABx1 26 that prevents the Oversight Board from entering or reentering into an agreement that has been challenged by DOF.

This gives the Successor Agency several options to recommend that the Oversight Board find that the subject City/RDA agreements are “enforceable obligations” *and* simultaneously “reenter” into these agreements.

However, the DOF is taking a contrary position to our reading of ABx1 26. Specifically, DOF announced last week the following position:

“Q. If Finance has objected to the inclusion of a repayment of a loan from the local agency that formed the redevelopment agency on the ROPS, will Finance object if the oversight board approves the reestablishment of that interagency agreement and provides for a repayment schedule.

A. Yes, Finance will object to any reestablishment of an agreement with the local agency that created the redevelopment agency, unless the successor can demonstrate that the redevelopment agency funding was contemporaneously pledged for payment of indebtedness obligations as set forth in Section 34171 of the Health and Safety Code.”

The DOF appears to be referring here to the language in Section 34171 that limits city-RDA loan agreements to only those within “two years” of the date of creation of the redevelopment agency as “enforceable obligations” and does not expressly allow obligations arising after that time to be treated as enforceable obligations. This provision relied on by DOF is being challenged in court as being invalid. (*City of Cerritos, et al. v. State of California*, Sacramento Superior Court, Case No. 34-2011-80000952).

Moreover, the DOF failed to address in the above quoted position statement the other provisions of ABx1 26, as cited in this letter, that gives broad authority to the Oversight Board to enter or reenter into agreements.

We anticipate that DOF’s position on this matter will result in further litigation against DOF by numerous cities and that a court will ultimately decide this matter within the next year. Two other lawsuits, that we are aware of besides the above-referenced *Cerritos* case, are already pending against DOF.

Suzanne Bragdon
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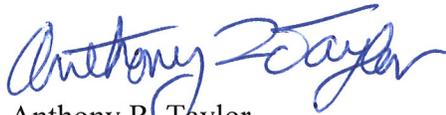
We anticipate that the “flood gates” of litigation will open even further soon against DOF over their misreading of ABx1 26 and their unlawful predetermination to object in advance to *all* oversight board actions across the State involving the re-entering into of agreements that DOF previously challenged, without having a complete record of the specific oversight board actions for the DOF to fully and fairly consider, before opining on these matters, as required by applicable law.

In order to preserve the Successor Agency and City’s legal rights during this time of extreme uncertainty, this matter must be presented to our Oversight Board for approval to reenter into the subject agreements. If the DOF challenges the Oversight Board’s approval, the matter will then be appropriate for judicial review, if necessary.

Please let me know if you have any questions.

Sincerely,

ALESHIRE & WYNDER, LLP



Anthony R. Taylor

cc: Lona Laymon, Esq.

Revenue/Expense Analysis - Residual Tax Increment Distribution - Scenario I

	3% A/V Decline 2012-13	1% A/V Decline 2013-14	Flat 2014-15	2% A/V Increase 2015-16	2% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,500,000	\$10,500,000	\$10,800,000	\$11,100,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,500,000	\$11,000,000	\$10,800,000	\$11,100,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
3 2003A	\$519,350	\$547,435	\$450,573	\$449,528	\$433,365
4 2003B	\$3,040,338	\$3,196,964	\$3,197,714	\$3,208,518	\$3,218,248
5 Marina Construction	\$452,070	\$452,070	\$452,070	\$452,070	\$452,070
6 Marina Expansion	\$268,000	\$268,000	\$268,000	\$268,000	\$268,000
7 County P/T	\$2,245,600	\$2,624,000	\$2,708,000	\$2,871,200	\$3,039,200
8 FSUSD P/T	\$898,085	\$956,129	\$1,016,567	\$1,126,674	\$1,192,352
9 SCC P/T	\$97,000	\$96,000	\$96,000	\$98,000	\$101,000
10 City P/T	\$251,289	\$264,575	\$278,126	\$291,949	\$306,048
11 County Office Edu P/T	\$59,000	\$58,000	\$58,000	\$60,000	\$62,000
12 ACA	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
13 State/County Admin	\$500,000	\$350,000	\$350,000	\$350,000	\$350,000
14 EO - MSW	\$105,571	\$108,738	\$112,000	\$115,360	\$118,821
15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses	\$10,440,418	\$10,477,412	\$10,533,402	\$10,473,370	\$10,733,234
Residual for Distribution	\$259,582	\$22,588	\$466,598	\$326,630	\$366,766
Aggregate Residual	\$1,442,164				

- 1 Assumes May 1, 2001 Certificate of Occupancy (CO), and minimum \$500k payment, and exercise of call option within 30 days after expiration of 13th anniversary of date of CO, which is subject to purview of SA and OB
- 2 Based on Bond Payment Schedule
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- 12 Assume \$250,000 through 2016-17 (may not be necessary as dissolution progresses)
- 13 Assume \$500,000 for FY 12-13, \$350,000 thereafter - not based on any figures from County or State - guesstimate)
- 14 Assumes 3% annual increase from 2012-13 actuals - will decline as property sells
- 15 Assumes \$350k years 1 through 5, \$500k years 6 through 13, and one final payment in year 13 of 567k
- 16 Assumes payment of \$48,770 consistent with past practice
- 17 Assumes \$800k payment in 2012-13 and \$350k payment in 2013-14 and 2014-15

Revenue/Expense Analysis - Residual Tax Increment Distribution - Scenario II

	3% A/V Decline 2012-13	Flat 2013-14	Flat 2014-15	2% A/V Increase 2015-16	3% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,700,000	\$10,700,000	\$11,000,000	\$11,400,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,700,000	\$11,200,000	\$11,000,000	\$11,400,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
3 2003A	\$519,350	\$547,435	\$450,573	\$449,528	\$433,365
4 2003B	\$3,040,338	\$3,196,964	\$3,197,714	\$3,208,518	\$3,218,248
5 Marina Construction	\$452,070	\$452,070	\$452,070	\$452,070	\$452,070
6 Marina Expansion	\$268,000	\$268,000	\$268,000	\$268,000	\$268,000
7 County P/T	\$2,245,600	\$2,673,600	\$2,759,200	\$2,924,000	\$3,120,800
8 FSUSD P/T	\$898,085	\$956,129	\$1,016,567	\$1,126,674	\$1,192,352
9 SCC P/T	\$97,000	\$97,000	\$97,000	\$100,000	\$104,000
10 City P/T	\$251,289	\$264,575	\$278,126	\$291,949	\$306,048
11 County Office Edu P/T	\$59,000	\$59,000	\$59,000	\$61,000	\$63,000
12 ACA	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
13 State/County Admin	\$500,000	\$350,000	\$350,000	\$350,000	\$350,000
14 EO - MSW	\$105,571	\$108,738	\$112,000	\$115,360	\$118,821
15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses	\$10,440,418	\$10,529,012	\$10,586,602	\$10,529,170	\$10,818,834
Residual For Distribution	\$259,582	\$170,988	\$613,398	\$470,830	\$581,166
Aggregate Residual	\$2,095,964				

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- 15 Assumes \$350k years 1 through 5, \$500k years 6 through 13, and one final payment in year 13 of 567k
- 16 Assumes payment of \$48,770 consistent with past practice
- 17 Assumes \$800k payment in 2012-13 and \$350k payment in 2013-14 and 2014-15

Revenue/Expense Analysis - Residual Tax Increment Distribution - Base Model					
	3% A/V Decline 2012-13	1% A/V Decline 2013-14	Flat 2014-15	2% A/V Increase 2015-16	2% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,500,000	\$10,500,000	\$10,800,000	\$11,100,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,500,000	\$11,000,000	\$10,800,000	\$11,100,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
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9 SCC P/T	\$97,000	\$96,000	\$96,000	\$98,000	\$101,000
10 City P/T	\$251,289	\$264,575	\$278,126	\$291,949	\$306,048
11 County Office Edu P/T	\$59,000	\$58,000	\$58,000	\$60,000	\$62,000
12 ACA	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
13 State/County Admin	\$500,000	\$350,000	\$350,000	\$350,000	\$350,000
14 EO - MSW	\$105,571	\$108,738	\$112,000	\$115,360	\$118,821
15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Total Expenses (Enforceable Obligations)	\$9,591,648	\$10,078,642	\$10,134,632	\$10,424,600	\$10,684,464

Excluding One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$1,108,352	\$421,358	\$865,368	\$375,400	\$415,536
Aggregate Residual	\$3,186,014				

16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses (incl 333 Sunset & Harbor Center)	\$10,440,418	\$10,477,412	\$10,533,402	\$10,473,370	\$10,733,234

Including One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$259,582	\$22,588	\$466,598	\$326,630	\$366,766
Aggregate Residual	\$1,442,164				

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Revenue/Expense Analysis - Residual Tax Increment Distribution - Scenario II

	3% A/V Decline 2012-13	Flat 2013-14	Flat 2014-15	2% A/V Increase 2015-16	3% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,700,000	\$10,700,000	\$11,000,000	\$11,400,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,700,000	\$11,200,000	\$11,000,000	\$11,400,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
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15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Total Expenses (Enforceable Obligations)	\$9,591,648	\$10,130,242	\$10,187,832	\$10,480,400	\$10,770,064
Excluding One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$1,108,352	\$569,758	\$1,012,168	\$519,600	\$629,936
Aggregate Residual	\$3,839,814				
16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses (incl 333 Sunset & Harbor Center)	\$10,440,418	\$10,529,012	\$10,586,602	\$10,529,170	\$10,818,834
Including One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$259,582	\$170,988	\$613,398	\$470,830	\$581,166
Aggregate Residual	\$2,095,964				

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- 17 Assumes \$800k payment in 2012-13 and \$350k payment in 2013-14 and 2014-15

GROUND LEASE REPAYMENT AGREEMENT FOR THE 333 SUNSET PROPERTY

The City of Suisun City, acting in its capacity as the Successor Agency to the former Suisun City Redevelopment Agency, the City of Suisun City, acting on its own behalf, and the Oversight Board to the Successor Agency to the City of Suisun City Redevelopment Agency, do hereby agree (the “Agreement”) to the following:

Recitals

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor has signed, companion bills AB 26 X1 (AB 26) and AB 27 X1 (AB 27), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case of *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of AB 26 and invalidated AB 27; and

WHEREAS, the Court’s decision results in the implantation of AB 26, which dissolved all redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City of Suisun City (the “City”) is, by operation of law, the Successor Agency (the “Successor Agency”) to the Suisun City Redevelopment Agency, the former redevelopment agency (the “Agency”) of the City, for purposes of winding down the redevelopment activities of the Agency under AB 26; and

WHEREAS, the Agency agreed to reimburse the City for ground lease payments totaling \$666,470 received by the Agency from land the City transferred to the Agency for no consideration for the 333 Sunset Ground Lease Reimbursement (the “333 Sunset Ground Lease Reimbursement”) in reliance on existing law at that time that the City would be re-paid for this transfer of property; and

WHEREAS, based on agreements between the City and Agency through the annual budgeting process, the Agency reimbursed the City a total of approximately \$341,940 prior to AB 26 becoming law (the “Prior Agreement”); and

WHEREAS, the remaining reimbursements of approximately \$325,080 have been determined by the Department of Finance to not meet the technical definition of an enforceable obligation under certain provisions of AB 26 thereby denying the City repayment of the remaining amount at this time; and

WHEREAS, the Successor Agency desires to honor the reimbursement to the City for the \$325,080 remaining associated with the 333 Sunset Ground Lease Reimbursement; and

WHEREAS, pursuant to Health & Safety Code Section 34178(a) of AB 26, a successor entity wishing to enter into agreements with the city that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board; and

WHEREAS, pursuant to Health & Safety Code Section 34180(a) of AB 26, an oversight board shall approve the establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of AB 26; and

WHEREAS, an oversight board is authorized by Health & Safety Code Section 34180(h) of AB 26 to receive and act upon a request by a successor agency to enter into an agreement with the city that formed the subject redevelopment agency that it is succeeding; and

WHEREAS, the Oversight Board to the Successor Agency to the City of Suisun City Redevelopment Agency (the "Oversight Board") has considered the request by the Successor Agency in this matter and has determined, after careful consideration of the facts, that the repayment of the 333 Sunset Ground Lease Reimbursement is consistent with the purposes of AB 26 and of unwinding redevelopment; and

WHEREAS, the Oversight Board further finds that the repayment of the 333 Sunset Ground Lease Reimbursement to the City would restore the *status quo* by preventing what would otherwise be an unfair transfer of revenue away from the City for property that the City transferred without charge to assist the Agency in good faith reliance that the City would later be repaid and that these funds would remain within the City.

Agreement

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Pursuant to Health & Safety Code Sections 34178(a) and 34180(a), (h) of AB 26, and all other applicable authorities, the Oversight Board hereby approves, by signing below, the Successor Agency to enter into this Agreement, and further approves the Successor Agency to re-enter into the Prior Agreement, based on the terms and conditions herein.

Section 3. The 333 Sunset Ground Lease Reimbursement payments shall be made to the City as follows: \$48,770 payable on February 1st on each year from February 1, 2013 through February 1, 2018. The remaining balance of the 333 Sunset Ground Lease Reimbursement payments of \$32,460 shall be paid to the City on February 1, 2019.

Section 4. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Section 5. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity that is not a party to this Agreement any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 6. Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

Section 7. The parties agree to work cooperatively in good faith to execute and deliver any additional documents and agreements that are necessary to implement any and all of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the undersigned have agreed to all of the terms and conditions herein and have executed this Agreement on the dates set forth below.

Oversight Board

Date: _____

By: _____

Attest: _____

Successor Agency

Date: _____

By: _____

Attest: _____

City of Suisun City

Date: _____

By: _____

Attest: _____

RESOLUTION NO. OB 2012 - __

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AN AGREEMENT WITH THE CITY OF SUISUN CITY TO REIMBURSE THE CITY FOR LEASE PAYMENTS RECEIVED BY THE FORMER REDEVELOPMENT AGENCY ASSOCIATED WITH THE 333 SUNSET OFFICE DEVELOPMENT

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, companion bills AB 26 X1 (AB 26) and AB 27 X1 (AB 27), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case of *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of AB 26 and invalidated AB 27; and

WHEREAS, the Court's decision results in the implantation of AB 26, which dissolved all redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City of Suisun City (the "City") is, by operation of law, the Successor Agency (the "Successor Agency") to the Suisun City Redevelopment Agency, the former redevelopment agency (the "Agency") of the City, for purposes of winding down the redevelopment activities of the Agency under AB 26; and

WHEREAS, the Agency agreed to reimburse the City for ground lease payments totaling \$666,470 received by the Agency from land the City transferred to the Agency for no consideration for the 333 Sunset Ground Lease Reimbursement (the "333 Sunset Ground Lease Reimbursement") in reliance on existing law at that time that the City would be re-paid for this transfer of property; and

WHEREAS, based on agreements between the City and Agency through the annual budgeting process, the Agency reimbursed the City a total of approximately \$341,940 prior to AB 26 becoming law (the "Prior Agreement"); and

WHEREAS, the remaining reimbursements of approximately \$325,080 have been determined by the Department of Finance to not meet the technical definition of an enforceable obligation under certain provisions of AB 26 thereby denying the City repayment of the remaining amount at this time; and

WHEREAS, the Successor Agency desires to honor the reimbursement to the City for the \$325,080 remaining associated with the 333 Sunset Ground Lease Reimbursement; and

WHEREAS, pursuant to Health & Safety Code Section 34178(a) of AB 26, a successor entity wishing to enter into agreements with the city that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board; and

WHEREAS, pursuant to Health & Safety Code Section 34180(a) of AB 26, an oversight board shall approve the establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of AB 26; and

WHEREAS, an oversight board is authorized by Health & Safety Code Section 34180(h) of AB 26 to receive and act upon a request by a successor agency to enter into an agreement with the city that formed the subject redevelopment agency that it is succeeding; and

WHEREAS, the Oversight Board to the Successor Agency to the City of Suisun City Redevelopment Agency (the "Oversight Board") has considered the request by the Successor Agency in this matter and has determined, after careful consideration of the facts, that the repayment of the 333 Sunset Ground Lease Reimbursement is consistent with the purposes of AB 26 and of unwinding redevelopment; and

WHEREAS, the Oversight Board further finds that the repayment of the 333 Sunset Ground Lease Reimbursement to the City would restore the *status quo* by preventing what would otherwise be an unfair transfer of revenue away from the City for property that the City transferred without charge to assist the Agency in good faith reliance that the City would later be repaid and that these funds would remain within the City.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency does resolve as follows:

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Pursuant to Health & Safety Code Sections 34178(a) and 34180(a), (h) of AB 26, and all other applicable authorities, the Oversight Board hereby authorizes the Successor Agency to enter into the Ground Lease Repayment Agreement for the 333 Sunset Property.

Section 3. The Oversight Board Chairman or designee is authorized to execute the Ground Lease Repayment Agreement for the 333 Sunset Property, authorizing the Agreement.

PASSED AND ADOPTED at a regular meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Friday, the 15th of June, 2012, by the following vote:

AYES:	BOARDMEMBERS:	_____
NOES:	BOARDMEMBERS:	_____
ABSENT:	BOARDMEMBERS:	_____
ABSTAIN:	BOARDMEMBERS:	_____

WITNESS my hand and the seal of the City of Suisun City this 15th of June, 2012.

Linda Hobson, CMC
Secretary

AGENDA TRANSMITTAL

MEETING DATE: June 15, 2012

OVERSIGHT BOARD AGENDA ITEM: Adoption of Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Costs Incurred Associated with the Harbor Center Street Extension Project

FISCAL IMPACT: There is no fiscal impact to the Oversight Board associated with this item.

IMPACT ON PASS-THROUGHS TO OTHER TAXING ENTITIES: This item has no impacts to the existing pass-through payments to other affected taxing entities. A complete analysis was provided in the June 1 staff report (provided as Attachment 1). The analysis was updated pursuant to the request of the Oversight Board to illustrate the residual tax increment available to affected taxing entities should the Successor Agency not re-enter into agreements relating to the Harbor Center Street Extension and 333 Sunset Ground Lease reimbursements (Attachments 2 & 3).

BACKGROUND: Between the years of 2007 and 2009, the City of Suisun City acquired the right of way and constructed the improvements necessary to complete the Harbor Center Street Extension project at a cost of approximately \$2,500,000. The completion of this project led to the development of Suisun City's first hotel in over 50 years, and was a critical element of the City's redevelopment plan to generate ongoing revenues for the City.

In June 2009, the City and former Redevelopment Agency adopted resolutions providing for reimbursement of the costs incurred by the City to complete the Harbor Center Street Extension. At that time, the City and the Agency adopted resolutions authorizing the repayment as a lump sum amount of \$2,500,000 during FY 2009-10. However, given the continued declines in assessed values resulting in lower tax increment revenues to the Redevelopment Agency, it was decided through the budgeting process to reimburse the City over a four-year period. By allowing this obligation to be reimbursed over a four-year period, the Agency was able to ensure it had sufficient annual working capital, while the City was able to ensure it had the necessary annual reserves as a result of the payment schedule. This reimbursement consisted of simple repayment for actual costs incurred by the City without any interest factored into the arrangement.

Ultimately, this obligation was paid off in March 2011, when the Agency paid the outstanding balance of \$1.5 million to the City. Three months later in June 2011, AB26 was passed by the Legislature and signed into law by the Governor. Pursuant to AB26, however, payments made between the Agency and the City retroactively to January 1, 2011 are deemed invalid and subject to reversal.

Nonetheless, Section 34178(a) of AB 26 provides the following:

“...a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board.”

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, Executive Director

Relative to this authority within AB1x26, the Oversight Board was presented with an informational item at its meeting on June 1, 2012 that provided the following information (the June 1 staff report is provided as Attachment 1):

- Legal considerations and authority for authorizing the Successor Agency to reenter into agreements with the City
- The financial impacts on the City if certain agreements are not reentered
- The impact on the existing pass-through payments to other affected taxing entities if certain agreements are reentered between the Successor Agency and the City.

At its June 1, 2012 meeting, the Oversight Board requested that if the Successor Agency wished to enter or reenter into such an agreement with the City, then a formal request by resolution should be made by the Successor Agency. At its meeting on June 12, 2012, the Successor Agency is considering a resolution to formally request the Oversight Board to consider authorizing the Successor Agency to enter into an agreement that would honor the payments to the City which are subject to reversal by the State of California. As of this writing, the Successor Agency had not yet considered the resolution making the formal request of the Oversight Board. This staff report is written on the condition that the Successor Agency adopts said resolution.

STAFF REPORT: As previously mentioned, the Harbor Center Street Extension reimbursement payments made after January 1, 2011 are deemed invalid and are subject to reversal pursuant to AB 26. The repayments at risk of being ordered reversed by the State of California consist of a \$1,500,000 payment made to the City in March 2011.

Recognizing the importance of this revenue to the City's General Fund, this issue is being raised proactively with the Oversight Board. From the City's perspective, this is a straight reimbursement that was authorized well before the implementation of AB26. As can be seen by the nature of this transaction, it wasn't something that was created to subvert the interests of the State (this project is fully consistent with the intention of redevelopment) nor was it used as a vehicle to increase revenues transferred from the Agency to the City (no interest was ever contemplated in this transfer/reimbursement agreement.) Absent AB26, the City expected to retain the entire the amount of costs incurred to acquire and construct the Harbor Center Street Extension project. The City has a financial strategy in place to address the current fiscal challenges resulting from the poor economic conditions. **If the City were required to return the \$1,500,000 it received in March 2011 with no repayment, the City's emergency reserves would be depleted by over 62%, which would leave the City with less than \$900,000 in emergency reserves.**

The Successor Agency is proposing to enter into an agreement with the City in order for the City to continue to receive simple reimbursement for actual costs incurred relating to the Harbor Center Street Extension project. The repayments would not include an interest component, as this is a simple reimbursement only for actual costs incurred. The proposed schedule of the reimbursement payments is provided in the table below:

HARBOR CENTER STREET EXTENSION PROJECT	
DATE	PROPOSED PAYMENT AMOUNT
Year 1 (February 2013)	\$800,000
Year 2 (February 2014)	\$350,000
Year 3 (February 2015)	\$350,000
TOTAL	\$1,500,000

If the City is reimbursed pursuant to the proposed repayment schedule, \$800,000 less would be available for distribution to other affected taxing entities next year, with \$350,000 less for years 2 and three. For example the County would stand to receive approximately 25% of the proposed \$1,500,000 repayment to the City over the three years. However, as illustrated in Attachment 2, even if the reimbursement agreements for the 333 Sunset Ground Lease Repayment and the Harbor Center Street Extension project are authorized, and assessed values continue to decline over the next two years, then remain flat for a year, and then experience a modest increase of 2% in years 4 and 5, the affected taxing entities would still stand to receive an estimated total of \$1.44 million over the next five years as a result of the elimination of the former redevelopment agency. As illustrated in Attachment 3, under the same scenario whereby agreements for the 333 Sunset Ground Lease Repayment and the Harbor Center Street Extension project are authorized, with slightly more aggressive growth assumptions for assessed values (3% decline in year 1, flat in years 2 and 3, 2% increase in year 4 and a 3% increase in year 5), the affected taxing entities would still stand to receive an estimated total of \$2.1 million over the next five years as a result of the elimination of the former redevelopment agency.

To proceed, the Successor Agency is required to have Oversight Board authorization to enter into an agreement approving a repayment schedule for the potential repayments remaining associated with the Harbor Center Street Extension project. A draft of the agreement is provided as Attachment 4. Adopting this resolution would authorize the Successor Agency to enter into such an agreement.

RECOMMENDATION: Adopt Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Costs Incurred Associated with the Harbor Center Street Extension Project

ATTACHMENTS:

1. Attachment 1 – June 1 Informational Item Staff Report
2. Attachment 2 – Updated Projected Revenue/Expense Estimates (Base Model)
3. Attachment 3 – Updated Projected Revenue/Expense Estimates (Aggressive Model)
4. Attachment 4 – Ground Lease Repayment Agreement for 333 Sunset Property
5. Attachment 5 –Oversight Board Resolution No. OB2012-__: Authorizing the Successor Agency to Enter into an Agreement with the City of Suisun City to Reimburse the City for Costs Incurred Associated with the Harbor Center Street Extension Project

AGENDA TRANSMITTAL

MEETING DATE: June 1, 2012

OVERSIGHT BOARD AGENDA ITEM: Informational Item – Legal Authority Under ABX1 26 (AB 26) for the Oversight Board to Authorize the Successor Agency to Reenter into Certain Agreements Between the Successor Agency and the City of Suisun City, including an Analysis of the Impact of “Keeping Whole” the Other Taxing Entities of Such Decisions.

FISCAL IMPACT: No fiscal impact at this time. This item is presented for informational purposes.

IMPACT ON PASS-THROUGHS TO OTHER TAXING ENTITIES: This item has no impacts to the existing pass-through payments to other affected taxing entities. See staff report for comprehensive sensitivity analysis.

BACKGROUND: At the April 13, 2012, Oversight Board Meeting, it was noted that several items listed on the Recognized Obligation Payment schedule were verbally determined by the State Department of Finance to not be enforceable obligations pursuant to AB 26. Specifically, the 333 Sunset Lease Reimbursements and the Civic Center Certificate of Participation Reimbursement Agreement. Since that time, we have received written confirmation of the DOF’s findings, and it has maintained its position that the 333 Sunset Lease Reimbursements are not an enforceable obligation. However, it has since been determined by the DOF that the Civic Center COP Reimbursement Agreement is an enforceable obligation.

Pursuant to AB 26, any agreements, contracts or arrangement between a city and its redevelopment agency are not valid and do not bind the Successor Agency with the following exceptions:

1. Any duly authorized written agreement between the city and the redevelopment agency entered into at the time of issuance, but prior to December 31, 2010, solely for the purpose of securing or repaying indebtedness obligations to third parties (as an example, the Civic Center COP Reimbursement Agreement meets this criteria); and
2. A written agreement between the city and redevelopment agency that was entered into within two years of the formation of the redevelopment agency.

However, Section 34178(a) of AB 26 provides the following:

“...a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board.”

Relative to this authority within AB1x26, the purpose of this informational item is to provide the Oversight Board with the following information:

- Legal considerations and authority for authorizing the Successor Agency to reenter into agreements with the City
- The financial impacts on the City if certain agreements are not reentered

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, Executive Director

- The impact on the existing pass-through payments to other affected taxing entities if certain agreements are reentered between the Successor Agency and the City.

Each of these items is discussed below.

STAFF REPORT:

At the Oversight Board meeting on June 15, 2012, staff will ask/recommend the Oversight Board to authorize the Successor Agency to reenter into two agreements with the City of Suisun City. These include specifically:

- 333 Sunset Ground Lease Reimbursement
- Harbor Center Road Extension Reimbursement.

To facilitate the Oversight Board's consideration of this request, this item is presented for information and discussion to ensure the Board has the information it needs to consider this request. Impacts to the City, impacts to the existing pass-throughs to the other affected taxing entities, and the legal authority of the Oversight Board to authorize such agreements is contained herein. An overview of the 333 Sunset Ground Lease Reimbursement and the Harbor Center Road Extension Reimbursement is also provided.

Transaction Summaries

333 Sunset Lease Reimbursement

As previously mentioned, the 333 Sunset Ground Lease Reimbursement, per the State Department of Finance (the "DOF"), is not considered an enforceable obligation, even though the property transfer took place and the ground lease was entered into within two years of the Redevelopment Plan being amended and restated.

The 333 Sunset Ground Lease Reimbursement consists of the repayment to the City for ground lease payments received by the Redevelopment Agency for land transferred to the Agency on October 11, 1989 *with no consideration to the City*. This transfer occurred within two years of the formation of the Amended Project Area, which occurred on July 18, 1989.

The Agency subsequently entered into a ground lease with a developer in February 1991. The ground lease resulted in the Agency being paid lease payments instead of the City, which should've been the recipient of such payments recognizing that the City received no compensation from the Agency at the time the land was transferred.

Pursuant to AB 26, Health & Safety Code Section 34178(b)(2) states that a written agreement between a redevelopment agency and the city, county, or city and county that created it that provided loans or other startup funds for the redevelopment agency that were entered into within two years of the formation of the redevelopment agency is not invalid. However, the State DOF's interpretation in denying this reimbursement agreement appears to be based not on when the property was transferred from the City to the Agency in the anticipation of future compensation, which did take place within two years, but rather when the ground lease payments were initiated, which fell within three years of when the Project Area was created. Needless to say, there are already lawsuits being filed from other jurisdictions questioning the legality of this arbitrary two year period of time.

The following provides an overview from a financial perspective with regard to this item:

- Total Ground Lease Payments Made to Agency - \$666,470
 - Ground Lease Payments were made to Agency between April 1991 and June 2003

- Agency has reimbursed the City for a total of \$341,390 to date
 - Payments have been made annually (\$48,770 since FY 2004-05)
- City expected the remaining \$325,080 to be repaid over the next 7 fiscal years.

The payments that historically have been made to the City, and which are hoped will be authorized to continue, are a simple reimbursement for actual lease payments, and do not include an interest component.

Harbor Center Street Extension Reimbursement

Between the years of 2007 and 2009, the City of Suisun City acquired the right of way and constructed the improvements necessary to complete the Harbor Center Street Extension project at a cost of approximately \$2,500,000. The completion of this project led to the development of Suisun City's first hotel in over 50 years, and a critical element of our redevelopment plan to generate ongoing revenues for the City.

In June 2009, the City and former Redevelopment Agency adopted resolutions providing for reimbursement of the costs incurred by the City to complete the Harbor Center Street Extension. At that time, the City and the Agency adopted resolutions authorizing the repayment as a lump sum amount of \$2,500,000 during FY 2009-10. However, given the continued declines in assessed values resulting in lower tax increment revenues to the Redevelopment Agency, it was decided through the budgeting process to reimburse the City over a four-year period. By allowing this obligation to be reimbursed over a four-year period, the Agency was able to ensure it had sufficient annual working capital, while the City was able to ensure it had the necessary annual reserves as a result of the payment schedule. A win-win proposition for all involved. As with the 333 Sunset Lease, this transaction was a simple reimbursement for actual costs incurred without any interest factored into the arrangement.

Ultimately, this obligation was paid off in March 2011, when the Agency paid the outstanding balance of \$1.5 million to the City. Three months later in June 2011, AB26 was passed by the Legislature and signed into law by the Governor. Pursuant to AB26, however, payments made between the Agency and the City retroactively to January 1, 2011 are deemed invalid and subject to reversal.

Recognizing the importance of this revenue to the City's General Fund (which is discussed in more detail subsequently in this staff report), staff is raising this issue proactively with the Oversight Board. From the City's perspective, this is a straight reimbursement that was authorized well before the implementation of AB26. As can be seen by the nature of this transaction, it wasn't something that was created to subvert the interests of the State (this project is fully consistent with the intention of redevelopment) nor was it used as a vehicle to increase revenues transferred from the Agency to the City (no interest was ever contemplated in this transfer/reimbursement agreement.)

As with the 333 Sunset Lease Reimbursement Agreement, the legality of the AB26 provisions that raise questions about this reimbursement agreement (i.e., creating laws that retroactively invalidate valid city/agency reimbursements, as well as the arbitrary two year provision) are being challenged in the courts at this time.

Legal Authority and Other Considerations

A letter from legal counsel to the Successor Agency providing a detailed explanation regarding the authority of the Oversight Board to authorize the Successor Agency to enter into such agreements with the City is provided as Attachment 1.

Further, the California Attorney General has represented in court that Health & Safety Code §§ 34171(d)(2)(C) and 34180(k) are not intended to invalidate any contracts that are legal under existing law. Specifically, on January 27, 2012, Ross Moody, Deputy Attorney General, acknowledged in open court in the case of City of Cerritos v. State of California, Sacramento County Superior Court, Case No. 34-2011-80000952, that "to the extent [a] city has entered into indebtedness or contract [with its redevelopment agency] for those same purposes [i.e. in reliance upon being repaid with tax increment revenues] there is no reason that AB 26 would invalidate those contracts." (Reporter's Transcript, at pp. 61-65.)

Moreover, Proposition 1A prohibits the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any fiscal year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues amongst local governments within a county must be approved by two-thirds of both houses of the Legislature. (Cal. Const. Art. XIII, § 25.5(a)(3).) AB 26 was not approved by a two-thirds vote in accordance with Proposition 1A.

The application of Proposition 1A to AB 26 is currently being litigated, along with other legal arguments concerning AB 26, in the above-referenced Cerritos case in the Sacramento Superior Court. Two additional cases were filed last week in Sacramento Superior Court challenging AB 26.

Thus, the validity of AB 26 is currently being litigated in court. *Preserving the status quo until the court resolves this matter is the best course of action given the uncertain set of circumstances.* By reentering into the reimbursement agreements, the Oversight Board is merely preserving the status quo before AB 26 went into effect and allowing the courts to resolve the current uncertainty in AB 26 and its application to the matters at issue here.

Impacts to the City of NOT Re-Entering into These Two Agreements

The City of Suisun City has been impacted greatly by the severe economic downturn of the past five years, as have all other governmental entities. Suisun City has navigated this downturn thus far by implementing cost saving measures such as:

- A hiring freeze that has resulted in 18 current vacancies (a total workforce reduction of nearly 18%)
- A 5% reduction in employee salaries, organization wide (while recognizing that the City's employee salaries are generally significantly below area cities)
- A total of \$2 million in reductions for FY2012-13 out of a prior year GF budget of roughly \$10 million; of these reductions, \$1.7 million is attributed to the elimination redevelopment
- These reductions are on top of significant cuts and reductions made over the past three to four years as assessed values have continued to decline in the realm of 35% to 40%.

The City has made cuts in every area, including reductions to our police officer force of nearly 17%; when considering all sworn personnel (including Commander and Chief), the reductions are nearly 13%.

Additionally, the City is operating pursuant to a “bridging strategy,” which essentially is utilizing one-time reserves of approximately \$1.1 million annually to balance the City’s general fund budget until a Wal-mart project in the development pipeline comes to fruition. This bridging strategy was carefully developed and is closely monitored. It was made possible by the strategic disposition of certain real property assets held by the City. The strategy is holding true with the Wal-mart project expected to break ground this summer, and be open for business in spring 2014. If this project were not to happen for whatever reason, the City’s General Fund would have another hole of over 10% to fill.

Given all of the above, even though the City was able to formulate a balanced budget for FY2012-13, given the uncertainties surrounding the implementation of AB 26, the precipitous decline in revenue streams available to the City, and a relentlessly depressed economic environment, the City of Suisun City is “on the ropes.”

The impacts on the City of not reentering into the two agreements of question are summarized below, and are NOT ASSUMED in the discussion above.

Fiscal Impacts Associated with 333 Sunset Lease

If the City is not reimbursed for the payments associated with the 333 Sunset Lease Repayments, it would represent another \$48,070 reduction to the City’s general fund revenues. This amount represents approximately 1% of city salaries (organization wide).

Fiscal Impacts Associated with Harbor Center Extension

If the \$1,500,000 of reimbursements made to the City prior to January 1, 2011 are reversed and not repaid, the City’s general fund reserve would be depleted. The \$1,500,000 currently represents more than 62% of the City’s emergency reserves. If this money is not repaid to the City, emergency reserves would drop to \$894,000.

Impacts on Pass-Through Payments to Other Affected Taxing Entities

At the Oversight Board meetings, it has been made clear the Board Members are interested in ensuring that the other affected taxing entities are not negatively impacted by decisions made by the Board relative to maintaining the status quo of pass-through revenues. The other taxing entities include, among others, the county, community college district, school district and water authority.

In order to determine whether or not re-entering into the two agreements that are the subject of this report (333 Sunset and Harbor Center) would negatively impact or put at risk the pass-through payments received by the other affected taxing entities, staff has provided a forecast estimate of revenues and expenses over the next five years (Attachment 2 and Attachment 3). The bottom-line is:

1. Reentering into these two agreements, even assuming further reductions in assessed values, does not negatively impact the existing pass-through payments made to the other affected taxing entities.
2. Additional funds in the realm of \$1.4 million to \$2.1 million are projected to be available for distribution to the other affected taxing entities - beyond the pass-through payments currently anticipated – over the next five years.

In the first scenario (Attachment 2), revenue projections are based on a forecast of tax increment revenue that includes continued declines in assessed values over the next two years, no growth in the third year, and 2% growth in years four and five. A one-time revenue is also included in year three, as the Agency’s Equity Participation in the One Harbor Center office building is callable,

and represents a minimum revenue of \$500,000. There are other assets of the Agency that will generate additional revenue, however, none were included for purposes of this analysis as the timing or amount of the revenue streams are relatively uncertain. This approach makes the analysis more conservative.

Expense projections over the same five-year period include debt service payments required pursuant to existing agreements, pass-through payments to other affected taxing entities pursuant to existing agreements, administrative cost estimates for the County and State with regard to implementing AB 26, and administrative costs to the Successor Agency for implementing AB 26. Re-payment schedules for both the 333 Sunset Lease and the Harbor Center reimbursement have likewise been developed and included in the analysis.

Based on the aforementioned factors, the projections show there would be additional funds to distribute in each of the next five years above and beyond existing pass-through payments totaling more than \$1.4 million even after allowing the Successor Agency to reenter into the reimbursement agreements.

A second scenario was also developed (Attachment 3), utilizing more aggressive assessed value projections (decline in assessed values of 3% in year 1, no growth in the second and third year, and 2% growth in year four and 3% growth in year five), and the same expense projections. This scenario reveals there would be additional funds of approximately \$2.1 million over the next five years provided to other affected taxing entities.

Thus, the existing pass-through agreements to other affected taxing entities are able to be honored assuming the reimbursement agreements with the City are implemented.

Next Steps

Based on discussion and input of the Oversight Board, staff plans to bring back for Board consideration proposed terms of the reimbursement agreements at the Oversight Board meeting on June 15, 2012, along with formal authorization from the Oversight Board to allow the Successor Agency to enter into such agreements. Any additional information requested by the Board to help in considering these requests will likewise be compiled.

RECOMMENDATION: Receive the presentation, discuss the item, and provide staff with direction and feedback.

ATTACHMENTS:

1. Attachment 1 – Letter from Aleshire & Wynder
2. Attachment 2 – Projected Revenue/Expense Estimates Base Model
3. Attachment 3 – Projected Revenue/Expense Estimates (Aggressive Model)



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May 25, 2012

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701 Civic Center Blvd.
Suisun City, CA 94585

Dear Suzanne and Jason:

This letter provides you with the legal authority supporting our opinion, as your City Attorney, that the Oversight Board can legally enter and reenter into various obligations pursuant to ABx1 26 that have recently been challenged by the California Department of Finance (“DOF”).

Specifically, even if an existing City/RDA agreement is for some reason deemed to be invalid and not binding by DOF because DOF formed the opinion that the agreement does not meet the specific criteria to be an “enforceable obligation” under ABx1 26, the Oversight Board expressly has the authority under ABx1 26 to allow the City to “enter or reenter” into these very same agreements, as an “enforceable obligation” under Health & Safety Code § 34178(a). That section provides:

“(a) Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board.” (emphasis added).

Similarly, Section 34180 provides that “[a]ll of the following successor agency actions shall first be approved by the oversight board”, including subpart (h): “[a] request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding.”

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Jason Garben
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No qualification or limitation is provided on the face of these subsections of ABx1 26 that prevents the Oversight Board from entering or reentering into an agreement that has been challenged by DOF.

This gives the Successor Agency several options to recommend that the Oversight Board find that the subject City/RDA agreements are “enforceable obligations” *and* simultaneously “reenter” into these agreements.

However, the DOF is taking a contrary position to our reading of ABx1 26. Specifically, DOF announced last week the following position:

“Q. If Finance has objected to the inclusion of a repayment of a loan from the local agency that formed the redevelopment agency on the ROPS, will Finance object if the oversight board approves the reestablishment of that interagency agreement and provides for a repayment schedule.

A. Yes, Finance will object to any reestablishment of an agreement with the local agency that created the redevelopment agency, unless the successor can demonstrate that the redevelopment agency funding was contemporaneously pledged for payment of indebtedness obligations as set forth in Section 34171 of the Health and Safety Code.”

The DOF appears to be referring here to the language in Section 34171 that limits city-RDA loan agreements to only those within “two years” of the date of creation of the redevelopment agency as “enforceable obligations” and does not expressly allow obligations arising after that time to be treated as enforceable obligations. This provision relied on by DOF is being challenged in court as being invalid. (*City of Cerritos, et al. v. State of California*, Sacramento Superior Court, Case No. 34-2011-80000952).

Moreover, the DOF failed to address in the above quoted position statement the other provisions of ABx1 26, as cited in this letter, that gives broad authority to the Oversight Board to enter or reenter into agreements.

We anticipate that DOF’s position on this matter will result in further litigation against DOF by numerous cities and that a court will ultimately decide this matter within the next year. Two other lawsuits, that we are aware of besides the above-referenced *Cerritos* case, are already pending against DOF.

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We anticipate that the “flood gates” of litigation will open even further soon against DOF over their misreading of ABx1 26 and their unlawful predetermination to object in advance to *all* oversight board actions across the State involving the re-entering into of agreements that DOF previously challenged, without having a complete record of the specific oversight board actions for the DOF to fully and fairly consider, before opining on these matters, as required by applicable law.

In order to preserve the Successor Agency and City’s legal rights during this time of extreme uncertainty, this matter must be presented to our Oversight Board for approval to reenter into the subject agreements. If the DOF challenges the Oversight Board’s approval, the matter will then be appropriate for judicial review, if necessary.

Please let me know if you have any questions.

Sincerely,

ALESHIRE & WYNDER, LLP



Anthony R. Taylor

cc: Lona Laymon, Esq.

Revenue/Expense Analysis - Residual Tax Increment Distribution - Scenario I

	3% A/V Decline 2012-13	1% A/V Decline 2013-14	Flat 2014-15	2% A/V Increase 2015-16	2% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,500,000	\$10,500,000	\$10,800,000	\$11,100,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,500,000	\$11,000,000	\$10,800,000	\$11,100,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
3 2003A	\$519,350	\$547,435	\$450,573	\$449,528	\$433,365
4 2003B	\$3,040,338	\$3,196,964	\$3,197,714	\$3,208,518	\$3,218,248
5 Marina Construction	\$452,070	\$452,070	\$452,070	\$452,070	\$452,070
6 Marina Expansion	\$268,000	\$268,000	\$268,000	\$268,000	\$268,000
7 County P/T	\$2,245,600	\$2,624,000	\$2,708,000	\$2,871,200	\$3,039,200
8 FSUSD P/T	\$898,085	\$956,129	\$1,016,567	\$1,126,674	\$1,192,352
9 SCC P/T	\$97,000	\$96,000	\$96,000	\$98,000	\$101,000
10 City P/T	\$251,289	\$264,575	\$278,126	\$291,949	\$306,048
11 County Office Edu P/T	\$59,000	\$58,000	\$58,000	\$60,000	\$62,000
12 ACA	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
13 State/County Admin	\$500,000	\$350,000	\$350,000	\$350,000	\$350,000
14 EO - MSW	\$105,571	\$108,738	\$112,000	\$115,360	\$118,821
15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses	\$10,440,418	\$10,477,412	\$10,533,402	\$10,473,370	\$10,733,234
Residual for Distribution	\$259,582	\$22,588	\$466,598	\$326,630	\$366,766
Aggregate Residual	\$1,442,164				

- 1 Assumes May 1, 2001 Certificate of Occupancy (CO), and minimum \$500k payment, and exercise of call option within 30 days after expiration of 13th anniversary of date of CO, which is subject to purview of SA and OB
- 2 Based on Bond Payment Schedule
- 3 Based on Bond Payment Schedule
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- 6 Based on Loan Payment Schedule
- 7 Based on Pass Through Agreement
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- 12 Assume \$250,000 through 2016-17 (may not be necessary as dissolution progresses)
- 13 Assume \$500,000 for FY 12-13, \$350,000 thereafter - not based on any figures from County or State - guesstimate)
- 14 Assumes 3% annual increase from 2012-13 actuals - will decline as property sells
- 15 Assumes \$350k years 1 through 5, \$500k years 6 through 13, and one final payment in year 13 of 567k
- 16 Assumes payment of \$48,770 consistent with past practice
- 17 Assumes \$800k payment in 2012-13 and \$350k payment in 2013-14 and 2014-15

Revenue/Expense Analysis - Residual Tax Increment Distribution - Scenario II

	3% A/V Decline 2012-13	Flat 2013-14	Flat 2014-15	2% A/V Increase 2015-16	3% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,700,000	\$10,700,000	\$11,000,000	\$11,400,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,700,000	\$11,200,000	\$11,000,000	\$11,400,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
3 2003A	\$519,350	\$547,435	\$450,573	\$449,528	\$433,365
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5 Marina Construction	\$452,070	\$452,070	\$452,070	\$452,070	\$452,070
6 Marina Expansion	\$268,000	\$268,000	\$268,000	\$268,000	\$268,000
7 County P/T	\$2,245,600	\$2,673,600	\$2,759,200	\$2,924,000	\$3,120,800
8 FSUSD P/T	\$898,085	\$956,129	\$1,016,567	\$1,126,674	\$1,192,352
9 SCC P/T	\$97,000	\$97,000	\$97,000	\$100,000	\$104,000
10 City P/T	\$251,289	\$264,575	\$278,126	\$291,949	\$306,048
11 County Office Edu P/T	\$59,000	\$59,000	\$59,000	\$61,000	\$63,000
12 ACA	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
13 State/County Admin	\$500,000	\$350,000	\$350,000	\$350,000	\$350,000
14 EO - MSW	\$105,571	\$108,738	\$112,000	\$115,360	\$118,821
15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses	\$10,440,418	\$10,529,012	\$10,586,602	\$10,529,170	\$10,818,834
Residual For Distribution	\$259,582	\$170,988	\$613,398	\$470,830	\$581,166
Aggregate Residual	\$2,095,964				

- 1 Assumes May 1, 2001 Certificate of Occupancy (CO), and minimum \$500k payment, and exercise of call option within 30 days after expiration of 13th anniversary of date of CO, which is subject to purview of SA and OB
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- 13 Assume \$500,000 for FY 12-13, \$350,000 thereafter - not based on any figures from County or State - estimate
- 14 Assumes 3% annual increase from 2012-13 actuals - will decline as property sells
- 15 Assumes \$350k years 1 through 5, \$500k years 6 through 13, and one final payment in year 13 of 567k
- 16 Assumes payment of \$48,770 consistent with past practice
- 17 Assumes \$800k payment in 2012-13 and \$350k payment in 2013-14 and 2014-15

Revenue/Expense Analysis - Residual Tax Increment Distribution - Base Model					
	3% A/V Decline 2012-13	1% A/V Decline 2013-14	Flat 2014-15	2% A/V Increase 2015-16	2% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,500,000	\$10,500,000	\$10,800,000	\$11,100,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,500,000	\$11,000,000	\$10,800,000	\$11,100,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
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12 ACA	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
13 State/County Admin	\$500,000	\$350,000	\$350,000	\$350,000	\$350,000
14 EO - MSW	\$105,571	\$108,738	\$112,000	\$115,360	\$118,821
15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Total Expenses (Enforceable Obligations)	\$9,591,648	\$10,078,642	\$10,134,632	\$10,424,600	\$10,684,464

Excluding One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$1,108,352	\$421,358	\$865,368	\$375,400	\$415,536
Aggregate Residual	\$3,186,014				

16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses (incl 333 Sunset & Harbor Center)	\$10,440,418	\$10,477,412	\$10,533,402	\$10,473,370	\$10,733,234

Including One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$259,582	\$22,588	\$466,598	\$326,630	\$366,766
Aggregate Residual	\$1,442,164				

- 1 Assumes May 1, 2001 Certificate of Occupancy (CO), and minimum \$500k payment, and exercise of call option within 30 days after expiration of 13th anniversary of date of CO, which is subject to purview of SA and OB
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Revenue/Expense Analysis - Residual Tax Increment Distribution - Scenario II

	3% A/V Decline 2012-13	Flat 2013-14	Flat 2014-15	2% A/V Increase 2015-16	3% A/V Increase 2016-17
Tax Increment	\$10,700,000	\$10,700,000	\$10,700,000	\$11,000,000	\$11,400,000
1 One Harbor Center Equity			\$500,000		
Total Revenue	\$10,700,000	\$10,700,000	\$11,200,000	\$11,000,000	\$11,400,000
2 1998 Bonds	\$555,345	\$556,731	\$547,583	\$533,301	\$543,360
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14 EO - MSW	\$105,571	\$108,738	\$112,000	\$115,360	\$118,821
15 COP Repayment	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Total Expenses (Enforceable Obligations)	\$9,591,648	\$10,130,242	\$10,187,832	\$10,480,400	\$10,770,064
Excluding One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$1,108,352	\$569,758	\$1,012,168	\$519,600	\$629,936
Aggregate Residual	\$3,839,814				
16 333 Sunset	\$48,770	\$48,770	\$48,770	\$48,770	\$48,770
17 Harbor Center Street Extension	\$800,000	\$350,000	\$350,000	\$0	\$0
Total Expenses (incl 333 Sunset & Harbor Center)	\$10,440,418	\$10,529,012	\$10,586,602	\$10,529,170	\$10,818,834
Including One Harbor Center and 333 Sunset Reimbursement Agreements					
Residual for Distribution	\$259,582	\$170,988	\$613,398	\$470,830	\$581,166
Aggregate Residual	\$2,095,964				

- 1 Assumes May 1, 2001 Certificate of Occupancy (CO), and minimum \$500k payment, and exercise of call option within 30 days after expiration of 13th anniversary of date of CO, which is subject to purview of SA and OB
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**AGREEMENT FOR THE REPAYMENT OF CITY FUNDS USED TO
COMPLETE THE HARBOR CENTER STREET EXTENSION PROJECT**

The City of Suisun City, acting in its capacity as the Successor Agency to the former Suisun City Redevelopment Agency, the City of Suisun City, acting on its own behalf, and the Oversight Board to the Successor Agency to the City of Suisun City Redevelopment Agency, do hereby agree (the "Agreement") to the following:

Recitals

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor has signed, companion bills AB 26 X1 (AB 26) and AB 27 X1 (AB 27), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case of *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of AB 26 and invalidated AB 27; and

WHEREAS, the Court's decision results in the implantation of AB 26, which dissolved all redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City of Suisun City (the "City") is, by operation of law, the Successor Agency (the "Successor Agency") to the Suisun City Redevelopment Agency, the former redevelopment agency (the "Agency") of the City, for purposes of winding down the redevelopment activities of the Agency under AB 26; and

WHEREAS, between 2007 and 2009, the City advanced \$2,500,000 of its funds for the acquisition of property, project design, project construction, and project inspection of the Harbor Center Street Extension Project for the development of the City's first hotel in more than 50 years and a critical element of the City's redevelopment plan; and

WHEREAS, the Agency agreed in June 2009 through resolutions to reimburse the City for the \$2.5 million paid by the City for the Harbor Center Street Extension Project in FY 2009-10 as a lump sum payment of \$2.5 million (the "Prior Agreement"); and

WHEREAS, this \$2.5 million lump sum re-payment in full was subsequently modified in 2009, for the benefit of the Agency, and the City only received repayments of \$500,000 for fiscal years 2009-10 and 2010-11, and the City was scheduled to be re-paid by the Agency the remaining outstanding amount of \$1.5 million at a later date;

WHEREAS, the City received \$1.5 million from the Agency in March 2011 to re-pay the remaining balance owed to the City for the Harbor Center Street Extension Project (the “Reimbursement Payment”); and

WHEREAS, the Reimbursement Payment is subject to being reversed by the State Controller under AB 26; and

WHEREAS, in order to ensure the reimbursement to the City for the costs incurred to complete the Harbor Center Street Extension Project, it is necessary for the Successor Agency to request authorization to enter such an agreement with the City; and

WHEREAS, pursuant to Health & Safety Code Section 34178(a) of AB 26, a successor entity wishing to enter into agreements with the city that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board; and

WHEREAS, pursuant to Health & Safety Code Section 34180(a) of AB 26, an oversight board shall approve the establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of AB 26; and

WHEREAS, an oversight board is authorized by Health & Safety Code Section 34180(h) of AB 26 to receive and act upon a request by a successor agency to enter into an agreement with the city that formed the subject redevelopment agency that it is succeeding; and

WHEREAS, the Oversight Board to the Successor Agency to the City of Suisun City Redevelopment Agency (the “Oversight Board”) has considered the request by the Successor Agency in this matter and has determined, after careful consideration of the facts, that the repayment of the Harbor Center Street Extension Project is consistent with the purposes of AB 26 and of unwinding redevelopment; and

WHEREAS, the Oversight Board further finds that the repayment of the Harbor Center Street Extension Project to the City would restore the *status quo* by preventing what would otherwise be an unfair transfer of revenue away from the City for funds that the City transferred to assist the Agency with a critical hotel project in good faith reliance that the City would later be repaid and that these funds would remain within the City.

Agreement

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Pursuant to Health & Safety Code Sections 34178(a) and 34180(a),(h) of AB 26, and all other applicable authorities, the Oversight Board hereby approves, by signing below, the Successor Agency to enter into this Agreement, and further approves the Successor Agency to re-enter into the Prior Agreement, based on the terms and conditions herein.

Section 3. Payments shall be made to the City as follows: \$800,000 payable on February 1, 2013, \$350,000 payable on February 1, 2014 and \$350,000 payable on February 1, 2015, for a total of \$1.5 million in repayment to the City. Upon execution of this Agreement by all parties, the City shall return, as directed by the State Controller, the \$1.5 million the City received from the Agency in March 2011 for the Harbor Center Street Extension Project.

Section 4. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Section 5. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity that is not a party to this Agreement any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 6. Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

Section 7. The parties agree to work cooperatively in good faith to execute and deliver any additional documents and agreements that are necessary to implement any and all of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the undersigned have agreed to all of the terms and conditions herein and have executed this Agreement on the dates set forth below.

Oversight Board

Date: _____

By: _____

Attest: _____

Successor Agency

Date: _____

By: _____

Attest: _____

City of Suisun City

Date: _____

By: _____

Attest: _____

RESOLUTION NO. OB 2012 - __

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AN AGREEMENT WITH THE CITY OF SUISUN CITY TO REIMBURSE THE CITY FOR COSTS INCURRED ASSOCIATED WITH THE HARBOR CENTER STREET EXTENSION PROJECT

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor has signed, companion bills AB 26 X1 (AB 26) and AB 27 X1 (AB 27), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case of *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of AB 26 and invalidated AB 27; and

WHEREAS, the Court's decision results in the implantation of AB 26, which dissolved all redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City of Suisun City (the "City") is, by operation of law, the Successor Agency (the "Successor Agency") to the Suisun City Redevelopment Agency, the former redevelopment agency (the "Agency") of the City, for purposes of winding down the redevelopment activities of the Agency under AB 26; and

WHEREAS, between 2007 and 2009, the City advanced \$2,500,000 of its funds for the acquisition of property, project design, project construction, and project inspection of the Harbor Center Street Extension Project for the development of the City's first hotel in more than 50 years and a critical element of the City's redevelopment plan; and

WHEREAS, the Agency agreed in June 2009 through resolutions to reimburse the City for the \$2.5 million paid by the City for the Harbor Center Street Extension Project in FY 2009-10 as a lump sum payment of \$2.5 million (the "Prior Agreement"); and

WHEREAS, this \$2.5 million lump sum re-payment in full was subsequently modified in 2009, for the benefit of the Agency, and the City only received repayments of \$500,000 for fiscal years 2009-10 and 2010-11, and the City was scheduled to be re-paid by the Agency the remaining outstanding amount of \$1.5 million at a later date;

WHEREAS, the City received \$1.5 million from the Agency in March 2011 to re-pay the remaining balance owed to the City for the Harbor Center Street Extension Project (the "Reimbursement Payment"); and

WHEREAS, the Reimbursement Payment is subject to being reversed by the State Controller under AB 26; and

WHEREAS, in order to ensure the reimbursement to the City for the costs incurred to complete the Harbor Center Street Extension Project, it is necessary for the Successor Agency to request authorization to enter such an agreement with the City; and

WHEREAS, pursuant to Health & Safety Code Section 34178(a) of AB 26, a successor entity wishing to enter into agreements with the city that formed the redevelopment agency that is succeeding may do so upon obtaining the approval of its oversight board; and

WHEREAS, pursuant to Health & Safety Code Section 34180(a) of AB 26, an oversight board shall approve the establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of AB 26; and

WHEREAS, an oversight board is authorized by Health & Safety Code Section 34180(h) of AB 26 to receive and act upon a request by a successor agency to enter into an agreement with the city that formed the subject redevelopment agency that it is succeeding; and

WHEREAS, the Oversight Board to the Successor Agency to the City of Suisun City Redevelopment Agency (the "Oversight Board") has considered the request by the Successor Agency in this matter and has determined, after careful consideration of the facts, that the repayment of the Harbor Center Street Extension Project is consistent with the purposes of AB 26 and of unwinding redevelopment; and

WHEREAS, the Oversight Board further finds that the repayment of the Harbor Center Street Extension Project to the City would restore the *status quo* by preventing what would otherwise be an unfair transfer of revenue away from the City for funds that the City transferred to assist the Agency with a critical hotel project in good faith reliance that the City would later be repaid and that these funds would remain within the City.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency does resolve as follows:

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Pursuant to Health & Safety Code Sections 34178(a) and 34180(a), (h) of AB 26, and all other applicable authorities, the Oversight Board hereby approves, by signing below, the Successor Agency to enter into this Agreement, and further approves the Successor Agency to re-enter into the Prior Agreement, based on the terms and conditions herein.

Section 3. Payments shall be made to the City as follows: \$800,000 payable on February 1, 2013, \$350,000 payable on February 1, 2014 and \$350,000 payable on February 1, 2015, for a total of \$1.5 million in repayment to the City. Upon execution of this Agreement by all parties, the City shall return, as directed by the State Controller, the \$1.5 million the City received from the Agency in March 2011 for the Harbor Center Street Extension Project.

Section 4. The Oversight Board Chairman or designee is authorized to execute the Agreement for the Repayment of City Funds Used to Complete the Harbor Center Street Extension Project, authorizing the Agreement.

PASSED AND ADOPTED at a regular meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Friday, the 15th of June, 2012, by the following vote:

AYES: BOARDMEMBERS: _____
NOES: BOARDMEMBERS: _____
ABSENT: BOARDMEMBERS: _____
ABSTAIN: BOARDMEMBERS: _____

WITNESS my hand and the seal of the City of Suisun City this 15th of June, 2012.

Linda Hobson, CMC
Secretary

AGENDA TRANSMITTAL

MEETING DATE: June 15, 2012

OVERSIGHT BOARD AGENDA ITEM: Adoption of Oversight Board Resolution No. OB2012-__: Approving a Repayment Schedule Associated with the Civic Center COP Reimbursement Agreement

FISCAL IMPACT: There is no fiscal impact to the Oversight Board associated with this item.

IMPACT ON PASS-THROUGHS TO OTHER TAXING ENTITIES: This item has no impacts to the existing pass-through payments to other affected taxing entities. A complete analysis was provided to the Board at its June 1, 2012, meeting.

BACKGROUND: Pursuant to a reimbursement agreement, the former redevelopment agency of the City of Suisun City (the “City”) is responsible for reimbursing the City for all lease payments (lease payments may also be referred to as debt service) paid to the Suisun City Public Financing Authority relating to a Certificate of Participation (COP) financing arrangement originally issued for the construction of the Suisun City Civic Center in 1987. To date, the total debt service paid on this obligation by the City amounts to \$6,168,318, with the remaining \$1,282,001 due over the next five years. Of the debt service paid to date, the former redevelopment agency reimbursed a total of \$3,867,045 (the \$3,867,045 includes a transfer from the former redevelopment agency of \$2,936,700 that was made in March 2011). Further, interest income from a debt service reserve account has offset the City’s debt service payments by a total of \$285,123. Thus, the remaining reimbursement obligation of the former redevelopment agency (now the successor agency) is currently approximately \$3,231,700, which corresponds to the total outstanding obligation listed on the Recognized Obligation Payment Schedule approved by the State Department of Finance (the “DOF”).

In June 2011, ABX1 26 (AB 26) was signed by the Governor, which effectively eliminated redevelopment agencies throughout California. As a result of AB 26, it is necessary for the City to transfer back \$2,936,700 to the Successor Agency in order to meet all of its financial obligations. As a result of this transfer back to the Successor Agency, the remaining Civic Center COP reimbursement obligation to the City would increase by approximately \$2,936,700 to approximately \$6,168,318 (Attachment 1 illustrates this calculation).

A summary of the Civic Center COP debt service schedule, reimbursement payments, interest income used to make debt service payments, and reimbursement amounts due are provided in Attachment 2. It is important to note the DOF has determined the Civic Center COP obligations are an enforceable obligation pursuant to AB 26.

There is no payment schedule currently in place to ensure the City is reimbursed for the debt service payments associated with the Civic Center COP by the November 1, 2025, deadline stated in the reimbursement agreement. Pursuant to Section 34180(a) of AB26, the establishment of new repayment terms must first be approved by the Successor Agency’s Oversight Board before the Successor Agency takes any action relating to such a payment schedule.

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, Executive Director

At its meeting on June 12, 2012, the Successor Agency is considering a resolution to formally request the Oversight Board to consider authorizing a repayment schedule for the Civic Center COP. As of this writing, the Successor Agency had not yet considered the resolution making the formal request of the Oversight Board. This staff report is written on the condition that the Successor Agency adopts said resolution.

STAFF REPORT: As previously mentioned, the DOF has determined the Civic Center COP arrangement is an enforceable obligation pursuant to AB 26. The total amount of the obligation listed on the approved ROPS is \$3,231,623. Upon the return of the \$2,936,700 from the City (which it initially received in March 2011), the total obligation increases to \$6,168,318. The proposed payment schedule is based on the entire \$6,168,318 obligation, and is provided as Attachment 3. Essentially, the proposed payment schedule would consist of payments of \$350,000 in years 1 through 5, \$500,000 in years 6 through 12, and a final payment in year 13 consisting of approximately \$418,318. The payment amounts over the first five years would be reduced by any interest income or debt service reserves used to meet debt service obligations. The proposed payment schedule was developed to ensure the City is reimbursed by the November 1, 2025, deadline, and to ensure there are sufficient funds available from the Real Property Tax Trust Fund (formerly known as tax increment) to meet its financial obligations. The proposed payment schedule was included in the analysis provided to the Oversight Board on June 1, 2012, which provided an overview on the residual “tax increment” available for distribution to other affected taxing entities. It is important to note that the existing pass-throughs to other affected taxing entities are not expected to be impacted as a result of the payment schedule as proposed.

To proceed, the Successor Agency is required to have Oversight Board approve the repayment schedule associated with the Civic Center COP obligation. Adopting this resolution would provide the required Oversight Board approval pursuant to Section 34180(a) of AB26. The repayment schedule would then be considered for adoption by the Successor Agency at the June 19, 2012 meeting. The City would also consider adopting the repayment schedule and returning the \$2,936,000 at the June 19, 2012 meeting.

RECOMMENDATION: Adopt Oversight Board Resolution No. OB2012-__: Approving a Repayment Schedule Associated with the Civic Center COP Reimbursement Agreement

ATTACHMENTS

Attachment 1 – Remaining Reimbursement Amount Calculation Tables

Attachment 2 – COP Summary

Attachment 3 – Proposed Repayment Schedule

Attachment 4 – Oversight Board Resolution No. OB2012-__: Approving a Repayment Schedule Associated with the Civic Center COP Reimbursement Agreement

Attachment 1
Remaining Reimbursement Calculations

Remaining Reimbursement Obligation	
Total Debt Service To Date	\$6,168,318
Total Debt Service Remaining	1,215,507.94
Total Debt Service	\$7,383,826
Less: Agency Reimbursement To Date	3,867,044.83
Less: Debt Service Paid From Interest Income	285,122.79
Equals Current Agency Reimbursement Obligation (ROPS)	3,231,658.32
Total Debt Service To Date	\$6,168,318
Total Debt Service Remaining	1,215,507.94
Total Debt Service	\$7,383,826
Less: Agency Reimbursement to Date	3,867,044.83
Plus: Refund of \$2,936,660 from City	2,936,660.00
Less: Debt Service Paid From Interest Income	285,122.79
Equals Projected Agency Reimbursement to Date	6,168,318.32

**Attachment 2
Civic Center COP Summary**

CIVIC CENTER COP DEBT SERVICE/REPAYMENT SUMMARY

SCHEDULED PAYMENT DATE (November 1)	PAYMENT SCHEDULE PRINCIPAL (Debt Service)	PAYMENT SCHEDULE INTEREST (Debt Service)	PAYMENT SCHEDULE TOTAL (Debt Service)	REIMBURSED BY RDA	INTEREST INCOME USED TO PAY DEBT SERVICE	BALANCE DUE FR RDA PURSUANT TO REIMBURSEMENT AGMT	CUMMULATIVE BALANCE DUE FROM RDA
1989	\$35,000	\$264,031	\$299,031			\$299,031	\$299,031
1990	\$35,000	\$261,756	\$296,756			\$296,756	\$595,788
1991	\$35,000	\$259,394	\$294,394			\$294,394	\$890,181
1992	\$40,000	\$256,944	\$296,944		\$12,741	\$284,202	\$1,174,384
1993	\$45,000	\$254,044	\$299,044		\$7,945	\$291,099	\$1,465,483
1 1994	\$0	\$191,184	\$191,185		\$8,078	\$183,106	\$1,648,589
2 1995	\$70,000	\$207,253	\$277,253		\$14,263	\$262,990	\$1,911,579
3 1996	\$90,000	\$203,915	\$293,915		\$18,092	\$275,823	\$2,187,401
4 1997	\$95,000	\$199,634	\$294,634		\$23,210	\$271,424	\$2,458,825
5 1998	\$95,000	\$195,003	\$290,003	\$139,488	\$19,000	\$131,514	\$2,590,340
6 1999	\$100,000	\$190,028	\$290,028	\$8,592	\$18,387	\$263,048	\$2,853,388
7 2000	\$110,000	\$184,513	\$294,513		\$14,329	\$280,183	\$3,133,571
8 2001	\$115,000	\$178,435	\$293,435		\$24,895	\$268,540	\$3,402,111
9 2002	\$120,000	\$171,853	\$291,853		\$24,589	\$267,263	\$3,669,374
10 2003	\$120,000	\$164,923	\$284,923		\$15,214	\$269,708	\$3,939,082
11 2004	\$0	\$0	\$0	\$278,204	\$4,824	-\$283,028	\$3,656,054
12 2005	\$180,000	\$84,253	\$264,253	\$0	\$3,604	\$260,649	\$3,916,703
13 2006	\$180,000	\$77,468	\$257,468	\$0	\$8,126	\$249,341	\$4,166,044
14 2007	\$185,000	\$73,858	\$258,858	\$0	\$11,834	\$247,024	\$4,413,068
15 2008	\$190,000	\$69,448	\$259,448	\$200,300	\$8,832	\$50,316	\$4,463,383
16 2009	\$195,000	\$64,245	\$259,245	\$101,000	\$50,502	\$107,743	\$4,571,126
17 2010	\$200,000	\$58,218	\$258,218	\$101,000	-\$2,467	\$159,684	\$4,730,811
18 2011	\$205,000	\$51,430	\$256,430	\$101,800	-\$876	\$155,506	\$4,886,317
19* 2011				\$2,936,660		-\$2,936,660	\$1,949,657
20 2012				-\$2,936,660		\$2,936,660	\$4,886,317
21 2012	\$215,000	\$43,811	\$258,811			\$258,811	\$5,145,128
23 2013	\$220,000	\$35,380	\$255,380			\$255,380	\$5,400,508
24 2014	\$230,000	\$26,150	\$256,150			\$256,150	\$5,656,658
25 2015	\$240,000	\$16,160	\$256,160			\$256,160	\$5,912,818
26 2016	\$250,000	\$5,500	\$255,500			\$255,500	\$6,168,318
TOTAL	\$3,595,000	\$3,788,825	\$7,383,826	\$930,385	\$285,123	\$6,168,318	

**Attachment 3
Civic Center COP Proposed Repayment Schedule**

Civic Center COP

Payment Schedule - Reimbursement Agmt

Year	Pmt Date	Pmt Amount	Outstanding
<i>Year 1*</i>	<i>11/1/2012</i>	<i>\$255,830</i>	<i>\$5,912,488</i>
<i>Year 1*</i>	<i>2/1/2013</i>	<i>\$94,170</i>	<i>\$5,818,318</i>
Year 2	11/1/2013	\$350,000	\$5,468,318
Year 3	11/1/2014	\$350,000	\$5,118,318
Year 4	11/1/2015	\$350,000	\$4,768,318
Year 5	11/1/2016	\$350,000	\$4,418,318
Year 6	11/1/2017	\$500,000	\$3,918,318
Year 7	11/1/2018	\$500,000	\$3,418,318
Year 8	11/1/2019	\$500,000	\$2,918,318
Year 9	11/1/2020	\$500,000	\$2,418,318
Year 10	11/1/2021	\$500,000	\$1,918,318
Year 11	11/1/2022	\$500,000	\$1,418,318
Year 12	11/1/2023	\$500,000	\$918,318
Year 13	11/1/2024	\$500,000	\$418,318
Year 14	11/1/2025	\$418,318	\$0
		\$6,168,318	

*Payment of \$255,830 is listed on the ROPS for period of July 1 through December 31, 2012. An additional amount of \$94,170 would be added to the ROPS for the period of Jan 1 through June 30, 2013 in order to ensure the \$350k payment in year 1.

Italics indicate the payment amount will be reduced by any interest income or debt service reserves used to pay the debt service obligation.

RESOLUTION NO. OB 2012 - __

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY APPROVING A REPAYMENT SCHEDULE ASSOCIATED WITH THE CIVIC CENTER COP REIMBURSEMENT AGREEMENT

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted and the Governor signed, companion bills AB 26 X1 (AB 26) and AB 27 X1 (AB 27), requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to making certain payments; and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case of *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of AB 26 and invalidated AB 27; and

WHEREAS, the Court's decision results in the implementation of AB 26, which dissolved all redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City of Suisun City (the "City") is, by operation of law, the Successor Agency (the "Successor Agency") to the Suisun City Redevelopment Agency, the former redevelopment agency (the "Agency") of the City, for purposes of winding down the redevelopment activities of the Agency under AB 26; and

WHEREAS, in connection with the original certificate of participation financing for the construction of the Suisun City Civic Center, the City and former redevelopment agency executed Reimbursement Agreements (dated November 1, 1987, June 1, 1993, and April 1, 2004), pursuant to which the Redevelopment Agency of the City of Suisun City agreed to repay the City for all lease (or debt service) payments required to be made by the City; and

WHEREAS, the State Department of Finance has determined the Civic Center Certificate of Participation financing arrangement is an enforceable obligation as defined pursuant to AB 26, and

WHEREAS, there is no payment schedule associated with the reimbursement agreement between the City and the former redevelopment agency that was executed for purposes of securing and repaying certificates of participation at the time the certificates were delivered; and

WHEREAS, the City of Suisun City is being requested to return approximately \$2,936,700 it received from the former redevelopment agency in March 2011, as a reimbursement payment pursuant to Civic Center COP reimbursement agreement, as the funds are necessary for the Successor Agency to meet its financial obligations pursuant to AB26; and

WHEREAS, it is necessary to determine a payment schedule to ensure the City is repaid by the November 1, 2025, deadline as stated in the reimbursement agreement; and

WHEREAS, pursuant to Section 34180(a) AB 26, the Oversight Board must approve the establishment of new repayment terms prior to the Agency taking action.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency does resolve as follows:

Section 1. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Pursuant to Health & Safety Code Section 34180(a) of AB 26, and all other applicable authorities, the Oversight Board hereby approves the repayment schedule between the Successor Agency and City of Suisun City associated with the Civic Center COP Reimbursement Agreement.

Section 3. Payments shall be made to the City in accordance with the schedule attached hereto and incorporated herein. Upon the repayment schedule becoming effective, the City shall be requested to return the \$2,936,700 the City received from the Agency in March 2011, in association with a repayment pursuant to the Civic Center COP Reimbursement Agreement.

PASSED AND ADOPTED at a regular meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Friday, the 15th of June, 2012, by the following vote:

AYES: BOARDMEMBERS: _____
NOES: BOARDMEMBERS: _____
ABSENT: BOARDMEMBERS: _____
ABSTAIN: BOARDMEMBERS: _____

WITNESS my hand and the seal of the City of Suisun City this 15th of June, 2012.

Linda Hobson, CMC
Secretary