



Pedro "Pete" M. Sanchez, Mayor
Lori Wilson, Mayor Pro-Tem
Jane Day
Michael J. Hudson
Michael A. Segala

First and Third Tuesday
Every Month

A G E N D A

**SPECIAL MEETING OF THE
SUISUN CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY,**

TUESDAY, JANUARY 12, 2016

7:00 P.M.

(Preceding the Regular Meeting)

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

NOTICE

Pursuant to Government Code Section 54953, Subdivision (b), the following Council/Successor Agency/Housing Authority includes teleconference participation by Councilmember Jane Day from: 301 Morgan Street, Suisun City, CA 94585.

Next Suisun City Council Acting as Successor Agency Res. No. SA2016 – 01)

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).

CONFLICT OF INTEREST NOTIFICATION

(Any items on this agenda that might be a conflict of interest to any Councilmembers / Boardmembers should be identified at this time.)

CONSENT CALENDAR

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

Suisun City Council Acting as Successor Agency

1. Agency Adoption of Resolution No. SA 2016-___: Authorizing Executive Director to Execute Settlement Agreement of Main Street West Partners Litigation and Directing the Executive Director to Forward the Executed Settlement Agreement to the Oversight Board for Approval – (Garben).

GENERAL BUSINESS

ADJOURNMENT

DEPARTMENTS: AREA CODE (707)

ADMINISTRATION 421-7300 ■ PLANNING 421-7335 ■ BUILDING 421-7310 ■ FINANCE 421-7320
FIRE 425-9133 ■ RECREATION & COMMUNITY SERVICES 421-7200 ■ POLICE 421-7373 ■ PUBLIC WORKS 421-7340
SUCCESSOR AGENCY 421-7309 FAX 421-7366

A complete packet of information containing staff reports and exhibits related to each item for the open session of this meeting, and provided to the City Council, are available for public review at least 72 hours prior to a Council /Agency/Authority Meeting at Suisun City Hall 701 Civic Center Blvd., Suisun City. Agenda related writings or documents provided to a majority of the Council/Board/Commissioners less than 72 hours prior to a Council/Agency/Authority meeting related to an agenda item for the open session of this meeting will be made available for public inspection during normal business hours. An agenda packet is also located at the entrance to the Council Chambers during the meeting for public review. The City may charge photocopying charges for requested copies of such documents. Assistive listening devices may be obtained at the meeting

PLEASE NOTE:

1. The City Council/Agency/Authority hopes to conclude its public business by 11:00 P.M. Ordinarily, no new items will be taken up after the 11:00 P.M. cutoff and any items remaining will be agendaized for the next meeting. The agendas have been prepared with the hope that all items scheduled will be discussed within the time allowed.
2. Suisun City is committed to providing full access to these proceedings; individuals with special needs may call 421-7300.
3. Agendas are posted at least 72 hours in advance of regular meetings at Suisun City Hall, 701 Civic Center Boulevard, Suisun City, CA. Agendas may be posted at other Suisun City locations including the Suisun City Fire Station, 621 Pintail Drive, Suisun City, CA, and the Suisun City Senior Center, 318 Merganser Drive, Suisun City, CA.

AGENDA TRANSMITTAL

MEETING DATE: January 12, 2016

SUCCESSOR AGENCY AGENDA ITEM: Agency Adoption of Resolution No. SA2016 - __: Authorizing Executive Director To Execute Settlement Agreement Of Main Street West Partners Litigation And Directing The Executive Director To Forward The Executed Settlement Agreement To the Oversight Board For Approval.

FISCAL IMPACT: Any sale of property, payment of fees, or other revenues from the Main Street West DDA will be distributed to the affected taxing entities.

BACKGROUND:
MSW DDA

In mid-2005, Main Street West Partners, LLC was selected as the master developer of the Main Street West Project, which initially consisted of 13 former Redevelopment Agency-owned properties in the Waterfront District amounting to approximately 8.4 acres for development of residential, commercial, and mixed-use projects. A Disposition and Development Agreement (DDA) was executed in April 2006.

In July 2006, the Agency approved the First Amendment to the DDA, which added a 7.44-acre property (the former Crystal Middle School site) to the Project. In September 2007, the Second Amendment to the DDA was approved, which updated the Schedule of Performance. In January 2009, the Third Amendment to the DDA was approved, which allowed the former Agency to acquire property from MSW Partners, provide an advance of developer reinvestment funds in the form of a loan, and to amend the Schedule of Performance. A map is provided as Attachment 1 that provides a graphic representation of the location of these properties.

DDA Extensions

The Main Street West Project, as a whole, fell victim to the “Great Recession,” which resulted in project delays due to economic conditions beyond the control of the City or Main Street West Partners. Financing was non-existent for several years, as the real estate markets in all sectors experienced declining values, low occupancy rates, and high rates of foreclosure activity. The initial term of the DDA expired on February 19, 2014. Thus, several extensions were granted to allow additional time to modify terms and conditions to the DDA, providing for the development to move forward in light of market conditions and redevelopment agency dissolution law. The intent was to update the DDA such that the original intent of the DDA could be carried out within the confines of economic realities and the State laws governing dissolution of former redevelopment agencies. Further, the updates would benefit the City, as well as the affected taxing entities. Those extensions ran through January 31, 2015

MSW Legal Action

On February 11, 2014, Main Street West Partners filed a complaint with the Solano County Superior Court for Validation under Code of Civil Procedure Section 863 and for Declaratory Relief to ask the court to validate the continued enforceability of the DDA and modifications to

PREPARED BY: Jason D. Garben, Development Services Director
REVIEWED/APPROVED BY: Suzanne Bragdon, Executive Director

allow completion of the performance of the requirements of the DDA, as the dissolution law has complicated the process to update the DDA. Further, in April 2014, the California Department of Finance appeared in the lawsuit filed by Main Street West Partners and sought to change the venue of the lawsuit from Solano County to Sacramento County Superior Court.

On May 22, 2014, the Court granted a change of venue that moved the case to the Sacramento County Superior Court, and on, or about, October 1, 2014, Main Street filed a First Amended Complaint for Declaratory Relief, Impairment of Contract, and Petition for Writ of Mandate in *Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.*, Sacramento Superior Court, Case No. 34-2014-00164737

Proposed Amendment

Even after the lawsuit was filed, the Successor Agency and its Oversight Board continued to work with Main Street West Partners on updates to the DDA that would allow the project to proceed, as well as meet the interests of all parties involved, including the affected taxing entities. In October 2014, the Successor Agency and Oversight Board approved various amendments to the DDA through the “Fourth Amendment” to the DDA which was forwarded to the DOF for review. On October 22, 2014, DOF initiated review. On December 1, 2014, Finance sent a letter denying approval of the Fourth Amendment. Successor Agency staff followed-up with DOF staff to discuss the letter and determine what information should be presented as part of a successful reconsideration by the DOF. DOF provided some clarity regarding the reasoning for the initial denial, and asked that certain findings be made by the Oversight Board and incorporated into a new resolution approving the Fourth Amendment for the second time. On February 18, 2015, DOF sent another letter denying the approval of the Fourth Amendment. Staff asked the DOF to reconsider the denial, and provided more information. This has led to a proposed settlement of the lawsuit that would approve the Fourth Amendment as it was initially approved by the Successor Agency and Oversight Board, first in October 2014, and again in January 2015.

STAFF REPORT: The settlement agreement proposed by the Attorney General’s Office provides for the reconsideration of the DOF’s prior February 18, 2015 denial of the Fourth Amendment to the DDA with MSW. Upon approval of the settlement agreement by the Successor Agency and MSW, the settlement agreement will be submitted to the Oversight Board for approval. Finance will, within ten (10) business days of receipt of the Oversight Board action, approve the Settlement Extension and approve, upon reconsideration, the Fourth Amendment. The approval of the Fourth Amendment will become effective on the Settlement Extension date of April 30, 2016. Once the DOF approves the Oversight Board’s action to approve the settlement agreement, if so approved by the Oversight Board, MSW is required to dismiss its lawsuit in its entirety, with prejudice, meaning it cannot be re-filed later.

The reason for the extension through April 30, 2016 is to allow MSW to re-engage equity partners that have been on hold through this entire process that began approximately two years ago. No new terms or provisions of the Fourth Amendment (as initially approved by the Successor Agency or Oversight Board) are being proposed as part of the Settlement Agreement. Further, the project must undergo all necessary environmental review and nothing in the settlement agreement is intended to override the required CEQA review.

The legal consequences of approving this settlement agreement include a mutual release of all claims by all parties and each party bears its own attorneys' fees and costs. MSW and the Successor Agency will not be able to make any claims arising from the prior dispute involving the DDA against each other, or against the DOF. Additionally, the Successor Agency will bear its own legal fees and cannot recover those legal fees and costs from the DOF or MSW for the dispute under the settlement. The City Attorney has reviewed the settlement agreement and found that these are standard settlement terms in this type of matter.

Thus, staff recommends adopting the attached resolution authorizing the Executive Director to execute the Settlement Agreement and forward the executed Settlement Agreement to the Oversight Board for approval. The Oversight Board is scheduled to meet on January 22, 2016.

RECOMMENDATION: Staff recommends that the Successor Agency:

1. Adopt Agency Resolution No. SA2016 - __: Authorizing Executive Director To Execute Settlement Agreement Of Main Street West Partners Litigation And Directing The Executive Director To Forward The Executed Settlement Agreement To the Oversight Board For Approval.

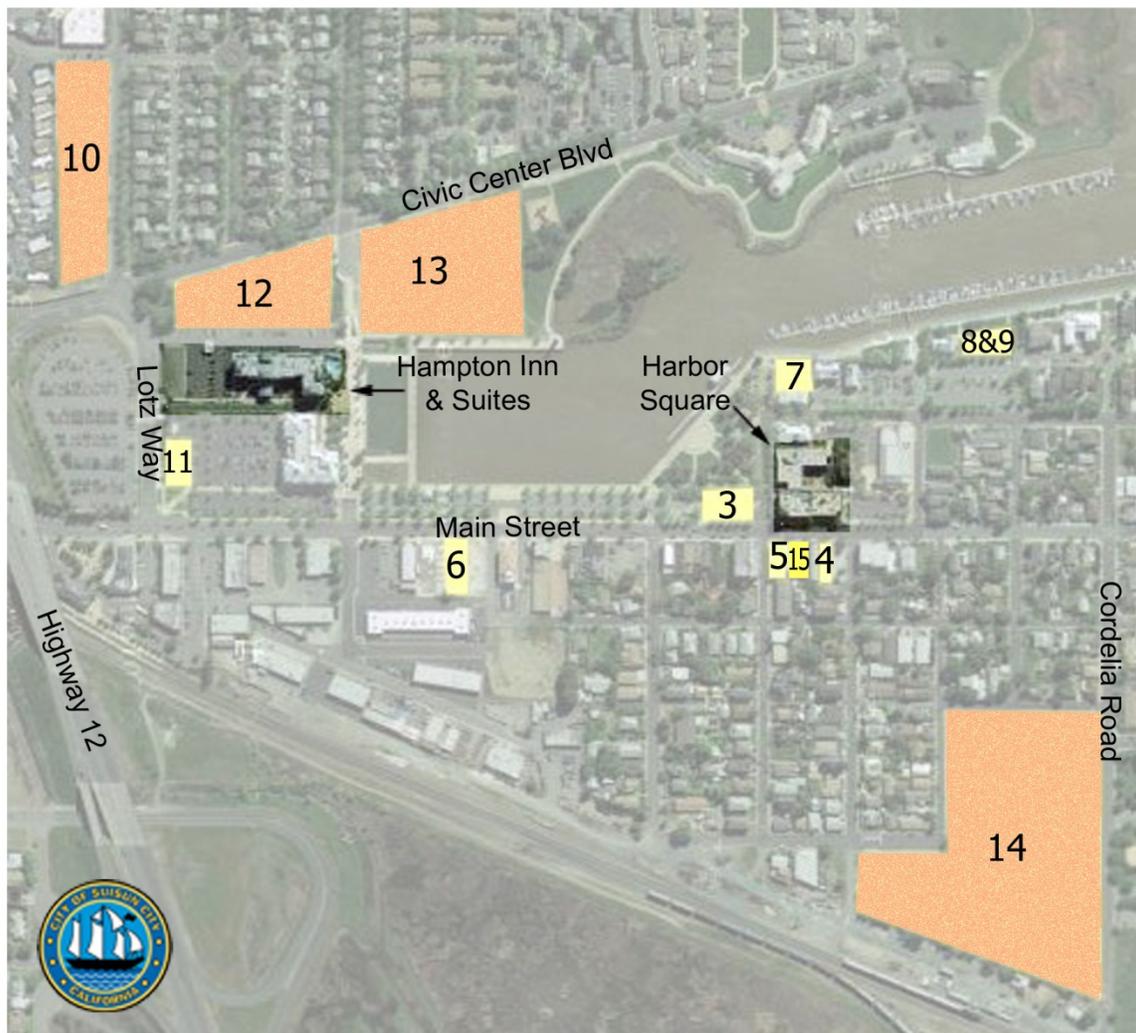
ATTACHMENTS:

1. Property ID Map.
2. Draft Settlement Agreement.
3. October 7, 2014 Staff Report – Successor Agency Approval of Fourth Amendment
4. Agency Resolution No. SA2016 - __: Authorizing Executive Director To Execute Settlement Agreement Of Main Street West Partners Litigation And Directing The Executive Director To Forward The Executed Settlement Agreement To the Oversight Board For Approval.

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Attachment 1

MAIN STREET WEST DDA PARCELS



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SETTLEMENT AGREEMENT

Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.,
Sacramento County Superior Court, Case No. 34-2014-00164737

PARTIES

This Settlement Agreement (“**Agreement**”) is entered into by the following parties: (1) Main Street West Partners, LLC (“**Main Street**”); (2) Successor Agency of the Redevelopment Agency of the City of Suisun City (“**Successor Agency**”); (3) the California Department of Finance and Michael Cohen, in his official capacity as California State Director of Finance (together, “**Finance**”) (all parties collectively, the “**Parties**”).

RECITALS

A. The litigation resolved by this Agreement relates to the wind down of the Redevelopment Agency for the City of Suisun City (“**RDA**”) pursuant to Assembly Bill 26 of the 2011-12 First Extraordinary Session of the California Legislature (“**AB x1 26**”) and Assembly Bill 1484 of the 2011-12 Regular Session of the California Legislature (“**AB 1484**”) (AB x1 26 and AB 1484, collectively the “**Dissolution Law**”).

B. Main Street and the RDA entered into a Disposition and Development Agreement dated April 7, 2006 (“**Original DDA**”), regarding the development of a commercial and residential project in Suisun City (“**Original DDA Project**”). The Original DDA was amended by a First Amendment to the Disposition and Development Agreement dated July 25, 2006; a Second Amendment to the Disposition and Development Agreement dated September 18, 2007; and a Third Amendment to the Disposition and Development Agreement dated February 19, 2009 (as amended, the “**DDA**”).

C. Following dissolution of the RDA, the Successor Agency became the successor-in-interest to all assets and obligations of the RDA, including the DDA.

D. The expiration date of the DDA was February 19, 2014. On January 17, 2014, the Oversight Board to the Successor Agency (“**Oversight Board**”) approved a 120-day extension to the expiration date of the DDA in Resolution No. OB 2014-01 (“**First Extension**”).

E. On January 21, 2014, Finance initiated review of the First Extension pursuant to Health & Safety Code section 34179, subdivision (h).

F. On February 10, 2014, Main Street filed a Complaint for Validation under Code of Civil Procedure Section 863 and for Declaratory Relief in Solano County Superior Court, entitled *Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.*, Solano County Superior Court Case No. FCS043017 (“**Original Action**”).

G. On February 28, 2014, Finance approved the First Extension. The Oversight Board subsequently approved further extensions to the expiration date of the DDA in Resolution Nos. OB 2014-04 (“**Second Extension**”), and OB 2014-07 (“**Third Extension**”). Finance

approved the Second and Third Extensions.

H. On or about April 11, 2014, Finance appeared in the Original Action pursuant to Code of Civil Procedure section 863 and moved to transfer venue to Sacramento County Superior Court.

I. On or about May 22, 2014, the Solano County Superior Court entered an order transferring the Original Action to Sacramento County Superior Court, which assigned it Case No. 34-2014-00164737. On or about October 1, 2014, Main Street filed a First Amended Complaint for Declaratory Relief, Impairment of Contract, and Petition for Writ of Mandate in *Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.*, Sacramento Superior Court, Case No. 34-2014-00164737 (“**Action**”).

J. On or about October 15, 2014 the Oversight Board approved another extension to the expiration date of the DDA in Resolution No. OB 2014-11 (“Fourth Extension”) and approved ~~various a Fourth a~~ Amendments to the ~~Disposition and Development Agreement~~ in Resolution No. OB 2014-12 (“~~Fourth Amendment~~”). On October 22, 2014, Finance initiated review. On December 1, 2014, Finance approved the Fourth Extension, but did not approve ~~OB 2014-12~~ the Fourth Amendment.

K. On or about January 8, 2015, the Oversight Board notified Finance of its Resolution Nos. OB 2015-01, which approved a further extension of the DDA, and OB 2015-02, which again approved ~~various amendments to the DDA~~ the Fourth Amendment. Finance initiated review of OB 2015-01 and OB 2015-02 pursuant to Health & Safety Code section 34179, subdivision (h), and, on February 18, 2015, sent the Oversight Board a letter stating that it did not approve OB 2015-01 and OB 2015-02.

L. On April 10, 2015, the Successor Agency requested that Finance reconsider its February 18, 2015, determination regarding OB 2015-01 and OB 2015-02, and provided further documentation and information in support of the request.

M. Finance has reviewed the request for reconsideration and the additional documentation and information provided in connection therewith.

N. Without admission of fault or wrongdoing, by entering into this Agreement the Parties have agreed to completely resolve any and all disputes between the Parties pertaining to the Action and the matters described in Recitals A through M of this Agreement.

AGREEMENT

Accordingly, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Principal Terms: The Parties agree to the following resolution of the litigation:

(a) To facilitate this Agreement, Main Street and the Successor Agency agree to use their best efforts to obtain Oversight Board approval for, and to execute, a further extension of the expiration date of the DDA from the expiration date provided for in Oversight Board

Resolution OB 2014-11 to ~~March 31~~, April 30, 2016 (“Settlement Extension”).

(b) If Main Street and the Successor Agency obtain Oversight Board approval for and execute the Settlement Extension, the Successor Agency will submit the Oversight Board action approving the Settlement Extension to Finance within three (3) business days. Finance will, within ten (10) business days of receipt of the Oversight Board action, approve the Settlement Extension and approve, upon reconsideration, the Fourth Amendment, such approval to become effective on the Settlement Extension date of April 30, 2016. The Fourth Amendment will remain in full force and effect.
~~Oversight Board Resolution OB 2015-02.~~

(c) If Finance approves the Settlement Extension and ~~OB 2015-02~~ Fourth Amendment, as provided in paragraph (1)(b), and so notifies Main Street in writing, Main Street shall, within five (5) business days of receipt of such notice, file a request for dismissal of the Action requesting that the Court dismiss the Action and all claims and causes of action pled therein with prejudice, and shall serve the same on all Parties (“Dismissal”).

(d) Upon the entry of the Dismissal as provided in paragraph (1)(c), the Parties specifically and mutually release and discharge each other, including their respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors and assigns from all existing claims, obligations, damages, costs, expenses, liens, attorney fees of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, disputed or undisputed, pertaining to the Project as alleged in the Action and ~~to the matters~~ described in Recitals A through N of this Agreement. The Parties do not specifically or mutually release and discharge each other, including their respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors and assigns, from future claims, obligations, damages, costs, expenses, liens, or attorney fees of any nature whatsoever, that may arise in regard to the Project, including but not limited to future extensions of and/or amendments to the DDA.

2. Claims Disputed: The Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. This Agreement is a compromise settlement of the Action, and by executing this Agreement, none of the Parties admits wrongdoing, liability, or fault in connection with, nor to the merit of, the Action, or the allegations asserted therein or in connection with Recitals A through N above.

3. Successors and Assigns: This Agreement shall be binding upon the Parties’ respective officers, directors, commission members, trustees, agents, employees, representatives, attorneys, departments, divisions, sections, successors and assigns.

4. Assumption of Risk: The Parties each represent that they fully understand that if the facts pertaining in any way to the Action are later found to be different from the facts now believed to be true by any Party, each of them expressly accepts and assumes the risk of such possible differences in facts and agrees that this Agreement shall remain effective notwithstanding such differences in facts. The Parties also each represent that this Agreement

was entered into under the laws current as of the effective date, and agree that this Agreement shall remain effective notwithstanding any future changes in the law.

5. Independent Advice of Counsel: The Parties each represent that they know and understand the contents of the Agreement and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations and with respect to the execution of this Agreement.

6. Entire Agreement: No promise, inducement, understanding, or agreement not expressed has been made by or on behalf of the Parties, and this Agreement contain the entire agreement between the Parties related to the Action.

7. No Assignment: Each Party represents that it has not assigned, transferred, or purported to assign or transfer to any person or entity any matter released herein.

8. Amendments in Writing: This Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed by the Parties. The Parties agree that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

9. Construction: The Parties agree that this Agreement is to be construed and interpreted without regard to the identity of the party drafting this Agreement.

10. Additional Acts: The Parties agree to take such actions and to execute such documents as are necessary to carry out the terms and purposes of this Agreement.

11. Attorneys Fees: The Parties shall each bear their respective attorney fees and costs incurred in the litigation.

12. Enforcement: If any Party to this Agreement files a lawsuit to enforce or interpret this Agreement, the prevailing Party in any such suit shall be entitled to reimbursement for reasonable attorney fees and costs.

13. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any Party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Sacramento, California.

14. Counterparts: This Agreement may be executed in counterparts, each of which is deemed an original and all of which shall constitute this Agreement.

15. Effective Date: The date on which the last counterpart of this Agreement is executed shall be the effective date of this Agreement.

16. Authority to Execute: Each Party represents that they have the authority to enter into and

perform the obligations necessary to provide the consideration described in this Agreement. Each person signing this Agreement represents and warrants that they have the authority to sign on behalf of the Party for which they sign.

This Agreement consists of Recital Paragraphs A - N and Paragraphs 1 – 16 above.

DATED: _____ MAIN STREET WEST PARTNERS, LLC
By _____
Its _____

DATED: _____ DEPARTMENT OF FINANCE AND MICHAEL COHEN, DIRECTOR OF FINANCE
By _____
Kari Krogseng
Its Chief Counsel _____

DATED: _____ SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY
By _____
Its _____

Approved as to Form and Content:
MORRIS POLICH & PURDY LLP

By: _____
[INSERT Attorney Name]
Attorneys for Petitioner/Plaintiff
Main Street West Partners, LLC

Approved as to Form and Content:
KAMALA D. HARRIS

Attorney General of California

By: _____

Aaron D. Jones, Deputy Attorney General
*Attorneys for Respondents/Defendants
California Department of Finance and
Michael Cohen*

Approved as to Form and Content:
ALESHIRE & WYNDER, LLP

By: _____

[INSERT Attorney Name]
*Attorneys for Respondent/Defendant
Successor Agency of the Redevelopment Agency of
the City of Suisun City*

AGENDA TRANSMITTAL

MEETING DATE: October 7, 2014

SUCCESSOR AGENCY AGENDA ITEM: PUBLIC HEARING – Main Street West Disposition and Development Agreement:

- a. Agency Adoption of Resolution No. SA2014 - __: Authorizing the Executive Director to Extend the Term of the Main Street West Disposition and Development Agreement (DDA); and
- b. Agency Adoption of Resolution No. SA2014 - __: Approving and Authorizing the Execution of the Fourth Amendment to the Disposition and Development Agreement (DDA) with Main Street West Partners, LLC.

FISCAL IMPACT: Any sale of property, payment of fees, or other revenues from the Main Street West DDA will be distributed to the affected taxing entities.

BACKGROUND:

MSW DDA

In mid-2005, Main Street West Partners, LLC was selected as the master developer of the Main Street West Project, which initially consisted of 13 former Redevelopment Agency-owned properties in the Waterfront District amounting to approximately 8.4 acres for development of residential, commercial, and mixed-use projects. A Disposition and Development Agreement (DDA) was executed in April 2006.

In July 2006, the Agency approved the First Amendment to the DDA, which added a 7.44-acre property (the former Crystal Middle School site) to the Project. In September 2007, the Second Amendment to the DDA was approved, which updated the Schedule of Performance. In January 2009, the Third Amendment to the DDA was approved, which allowed the former Agency to acquire property from MSW Partners, provide an advance of developer reinvestment funds in the form of a loan, and to amend the Schedule of Performance. A map is provided as Attachment 1 that provides a graphic representation of the location of these properties.

MSW Accomplishments

Despite the economic downturn that developed into the “Great Recession,” significant progress has been made since the inception of this project on several fronts including:

- The “Harbor Square” mixed-use project located at the southwest corner of Main Street and Solano Street is complete and approximately 75% occupied. This project contains approximately 40,000 square feet of retail and office space, and includes a public courtyard area that features the fireplace centerpiece.
- Main Street West Partners purchased a privately held 2± acre site adjacent to the eastern line of the One Harbor Center office development at the north end of the waterfront, and subsequently sold the property to Basin Street Properties, which resulted in the development of the Hampton Inn and Suites - Suisun City’s first hotel in more than 50 years.

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, Executive Director

RESOLUTION NO. SA 2016 -__

A RESOLUTION OF THE CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE SETTLEMENT AGREEMENT OF MAIN STREET WEST PARTNERS LITIGATION AND DIRECTING THE EXECUTIVE DIRECTOR TO FORWARD THE EXECUTED SETTLEMENT AGREEMENT TO THE OVERSIGHT BOARD FOR APPROVAL.

WHEREAS, the Redevelopment Agency of the City of Suisun City (the “RDA”) entered into a Disposition and Development Agreement (the “DDA”) with Main Street West Partners (the Developer) dated April 17, 2006; and

WHEREAS, said DDA has been revised from time to time by Amendments Nos. 1 – 3; and

WHEREAS, following dissolution of the RDA, the Successor Agency (the “Agency”) became the successor-in-interest to all assets and obligations of the RDA, including the DDA; and

WHEREAS, the expiration date of the DDA was February 19, 2014. On January 17, 2014, the Oversight Board to the Successor Agency (“Oversight Board”) approved a 120-day extension to the expiration date of the DDA in Resolution No. OB 2014-01 (“First Extension”); and

WHEREAS, on January 21, 2014, the California State Department of Finance (“Finance”) initiated review of the First Extension pursuant to Health & Safety Code section 34179, subdivision (h); and

WHEREAS, on February 10, 2014, the Developer filed a Complaint for Validation under Code of Civil Procedure Section 863 and for Declaratory Relief in Solano County Superior Court, entitled *Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.*, Solano County Superior Court Case No. FCS043017 (“Original Action”); and

WHEREAS, on February 28, 2014, Finance approved the First Extension. The Oversight Board subsequently approved further extensions to the expiration date of the DDA in Resolution Nos. OB 2014-04 (“Second Extension”), and OB 2014-07 (“Third Extension”). Finance approved the Second and Third Extensions; and

WHEREAS, on or about April 11, 2014, Finance appeared in the Original Action pursuant to Code of Civil Procedure section 863 and moved to transfer venue to Sacramento County Superior Court; and

WHEREAS, on or about May 22, 2014, the Solano County Superior Court entered an order transferring the Original Action to Sacramento County Superior Court, which assigned it Case No. 34-2014-00164737. On or about October 1, 2014, Main Street filed a First Amended Complaint for Declaratory Relief, Impairment of Contract, and Petition for Writ of Mandate in *Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.*, Sacramento Superior Court, Case No. 34-2014-00164737 (“**Action**”); and

WHEREAS, on or about October 15, 2014 the Oversight Board approved another extension to the expiration date of the DDA in Resolution No. OB 2014-11 (“Fourth Extension”) and approved various amendments to the DDA in Resolution No. OB 2014-12. On October 22,

2014, Finance initiated review. On December 1, 2014, Finance approved the Fourth Extension, but did not approve OB 2014-12; and

WHEREAS, on or about January 8, 2015, the Oversight Board notified Finance of its Resolution Nos. OB 2015-01, which approved a further extension of the DDA, and OB 2015-02, which approved various amendments to the DDA. Finance initiated review of OB 2015-01 and OB 2015-02 pursuant to Health & Safety Code section 34179, subdivision (h), and, on February 18, 2015, sent the Oversight Board a letter stating that it did not approve OB 2015-01 and OB 2015-02; and

WHEREAS, on April 10, 2015, the Successor Agency requested that Finance reconsider its February 18, 2015, determination regarding OB 2015-01 and OB 2015-02, and provided further documentation and information in support of the request; and

WHEREAS, Finance has reviewed the request for reconsideration and the additional documentation and information provided in connection therewith; and

WHEREAS, without admission of fault or wrongdoing, by entering into the Proposed Settlement Agreement (the "Agreement"), the Parties have agreed to completely resolve any and all disputes between the Parties pertaining to the Action.

WHEREAS, The litigation resolved by the Agreement relates to the wind down of the RDA pursuant to Assembly Bill 26 of the 2011-12 First Extraordinary Session of the California Legislature ("AB x1 26") and Assembly Bill 1484 of the 2011-12 Regular Session of the California Legislature ("AB 1484") (AB x1 26 and AB 1484, collectively the "Dissolution Law").

NOW, THEREFORE, THAT THE CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY DOES RESOLVE AS FOLLOWS:

Section 1. The above recitals are true and correct.

Section 2. The Settlement Agreement in substantially the form on file with the Secretary of the Agency is hereby approved. The Executive Director of the Successor Agency (or designee) is hereby authorized on behalf of the Agency to execute the Settlement Agreement, subject to necessary approvals from the Oversight Board and Finance, and to make revisions to said which do not materially or substantially increase the Agency's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Settlement Agreement.

PASSED AND ADOPTED at a special meeting of the City Council Acting as Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Tuesday, the 12th day of January 2016, by the following vote:

AYES:	Boardmembers:	_____
NOES:	Boardmembers:	_____
ABSENT:	Boardmembers:	_____
ABSTAIN:	Boardmembers:	_____

WITNESS my hand and the seal of said City this 12th day of January 2016.

Linda Hobson, CMC
Secretary

- Two other commercial projects have been approved through construction documents (on Parcels 3 and 7). Parcel 3 will consist of approximately 5,500 square feet of ground floor retail with 5,500 square feet of office (or possibly residential) on the second floor. Parcel 7 consists of approximately 4,100 square feet of restaurant space on the ground floor with a 3,600± square foot banquet facility on the second floor. These projects are positioned such that construction can begin as soon as the market will allow.
- A tentative subdivision map has been approved on Parcel 10 (currently 16 single-family residences similar in size and character of neighboring Victorian Harbor product). However, modifications are expected to the tentative map to better accommodate current market conditions.

DDA Extensions

Despite the aforementioned accomplishments, the Main Street West Project as a whole fell victim to the “Great Recession,” which resulted in project delays due to economic conditions beyond the control of the City or Main Street West Partners. Financing was non-existent for several years as the real estate markets in all sectors experienced declining values, low occupancy rates, and high rates of foreclosure activity. The initial term of the DDA expired on February 19, 2014. Thus, a 120-day extension was granted in order to allow additional time to modify terms and conditions to the DDA that would provide for the development to move forward in light of market conditions and redevelopment agency dissolution law. The intent was to update the DDA such that the original intent of the DDA could be carried out within the confines of economic realities and the State laws governing dissolution of former redevelopment agencies for the benefit of the City as well as the affected taxing entities.

Two additional 60-day extensions to the term of the DDA were granted by the Successor Agency and approved by the Oversight Board and Department of Finance. Those extensions currently run through October 17, 2014.

MSW Legal Action

On February 11, 2014, Main Street West Partners filed a complaint with the Solano County Superior Court for Validation under Code of Civil Procedure Section 863 and for Declaratory Relief to ask the court to validate the continued enforceability of the DDA and modifications to allow completion of the performance of the requirements of the DDA, as the dissolution law has complicated the process to update the DDA. Since MSW Partners filed the complaint, staff continued to work in good faith with Main Street West Partners to update the DDA and to carry the project forward. However, in April 2014, the California Department of Finance appeared in the lawsuit filed by Main Street West Partners and sought to change the venue of the lawsuit from Solano County to Sacramento County Superior Court.

On May 22, 2014, the Court granted a change of venue that moved the case to the Sacramento County Superior Court, and the Solano County Superior Court ordered the Sacramento County Superior Court to schedule an expedited handling of the case. The Attorney General’s office then filed a demurrer in Sacramento County Superior Court on July 14, 2014, on behalf of the DOF that was set for hearing on October 2, 2014.

Attempts were made in August 2014 by attorneys for Main Street West Partners and the Successor Agency after this demurrer was filed by the Attorney General, to have a meeting with the DOF to

address the issues in the lawsuit. The Attorney General's Office has indicated that the DOF is unwilling to meet either Main Street West Partners or the Successor Agency at this time to attempt to resolve these issues.

Main Street West Partners recently amended its complaint with the Court, which resulted in the Attorney General's demurrer being taken off the Court calendar. As of this time, the Attorney General had not responded to the amended complaint.

Proposed Amendment

Staff has continued to work with Main Street West Partners on updates to the DDA that would allow the project to proceed, as well as meet the interests of all parties involved, including the affected taxing entities. The affected taxing entities would ultimately receive the benefit of proceeds from the sale of property associated with the project as well as on-going property tax revenues as a result of development.

In working with Main Street West Partners, staff, through the MSW Ad Hoc Committee have completed a proposed 4th Amendment to the DDA that addressed the interests of all parties. It is important to note that such an amendment will require Oversight Board and DOF approval.

STAFF REPORT: In order to facilitate review, this staff report is organized into the following sections:

- DDA Updates
- Approval Process of 4th Amendment
- DDA Extension

DDA Updates

In September 2013, the Successor Agency directed staff to craft an Amendment to the existing DDA that took in to account the following common interests:

- Facilitate timely development reflective of current economic conditions
- Timely dissolution of properties at highest and best use resulting in maximum value to the affected taxing entities
- Maintain the character of downtown while expanding the local tax base
- Consistency with the intent of the redevelopment dissolution laws

The Main Street West Ad Hoc Committee (currently Mayor Pro Tem Wilson and Councilmember Segala) met with staff and MSW Partners on several occasions as the negotiations have progressed since last September. The following provides an outline of the updates to the DDA that would allow the project to proceed, and is consistent with direction of the Successor Agency:

1. Purchase Price – Purchase price of each property is revised to reflect a current market value as determined by a third party appraisal.
2. Parcel 12 – The project description for Parcel 12 has been amended from proposed residential to proposed commercial that will be marketed for a hotel use.
3. Deposits – Deposits of \$30,000 per residential parcel (Parcels 10, 13, and 14) are required within 30 days of appraisal, and the remaining commercial parcels (Parcels 3, 4, 5, 6, 7, 8, 9, 11, and 12) would require a deposit of 10% of the fair market value, also due within 30 days of appraisal. The existing \$100,000 deposit held in escrow would be released to MSW Partners in increments with the first \$50,000 released upon submittal of first

tentative map, and the second \$50,000 released upon first tentative residential subdivision map approval on Parcel 13 or 14.

4. Developer Reinvestment – MSW Partners is required to reinvest a portion of the profits from the residential component into the commercial components of the project. The reinvestment language has been updated to better reflect current market conditions. Specifically, the required reinvestment is 50% of the profits from the sale of the residential parcels, but in no event less than \$5,500 per residential lot. The reinvestment proceeds are to be audited on an annual basis by a third party auditor, and held in a separate bank account. The use of the reinvestment proceeds is limited if requested to be used on Harbor Square.
5. Line of Credit – An extension would be granted for the full repayment of the \$500,000 line of credit with a requirement that any reinvestment proceeds generated from sale of residential parcels be first applied toward the payoff of the line of credit before being used to invest in commercial components of the project. The line of credit is to be paid in full within five (5) years from the effective date of the amendment.
6. West Side of Main Street Acquisition Requirement – The requirement of the Developer to acquire or gain control of 5 parcels on the west side of Main Street in order to proceed with all residential components of the development is waived. To date, 3 parcels on the west side of Main Street were acquired through the efforts of MSW Partners. By allowing the residential components to move forward without further acquisition requirements, development activity in the Waterfront District will be accelerated.
7. Parking Study Fee – The \$10,000 payment due from MSW Partners for a parking study is due concurrent with the first sale of residential property, but not later than 30 months from the effective date of the 4th Amendment.
8. Lighthouse Development Fee – The Lighthouse Development Fee (\$1.0029 per square foot of land) due from Harbor Square development is due concurrent with the first sale of the residential property, but not later than 30 months from the date of the 4th Amendment. New Lighthouse Development Fees to be paid with Building Permit Fees.
9. Downtown Economic Impact Fee – A fee paid to the City with building permits of \$4,800 per residential unit would be required if the City provides a water and/or sewer connection fee credit of at least \$4,800. The fees from the Economic Impact Fee would create a fund within the City to pay for necessary infrastructure improvements for commercial development activity in the Waterfront District. This tool would offer an alternative funding source for improvements that were assumed to be made by the Redevelopment Agency prior to its dissolution. The water/sewer connection fee credits would be provided by the City from the credits remaining from the demolition of the former Crescent neighborhood.
10. West Side of Main Street – MSW Partners is to work with the City to explore alternative financing and/or grant opportunities to further required infrastructure development and/or preservation opportunities on the west side of Main Street.
11. Crystal Middle School Demolition – The current market value of the former Crystal Middle School property will reflect the additional value created by the demolition of the former Crystal Middle School improvements.

12. Qualified Successor Developer – Provides for additional flexibility that will allow for sale of entitled residential parcels directly to a Qualified Successor Developer, and provides for Agency approval of Qualified Successor Developer based on certain criteria.

Several other technical and legal updates are included as part of the 4th Amendment such as:

- Enhanced indemnity language that protects the Agency in the event of a lawsuit; and
- Clarification that necessary environmental review must be completed before any component of the project can proceed, and are subject to all City approval processes, as applicable; and
- Limitations on Agency responsibility to clear issues associated with exceptions to title; and
- Updated development timeline

Approval Process of 4th Amendment

In order for the 4th Amendment to be perfected, in addition to the approval of the Successor Agency, the Oversight Board would need to adopt a resolution authorizing the 4th Amendment, and the Department of Finance will likely review the Oversight Board action (if the Oversight Board action authorizes execution of the 4th Amendment).

Under applicable redevelopment dissolution law, the Oversight Board can direct the Successor Agency, subject to review by the Department of Finance, to “determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be . . . renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed . . . amendment agreements to the oversight board for its approval. The board may approve any amendments to . . . those agreements if it finds that amendments . . . would be in the best interests of the taxing entities.” (Health & Safety Code Section 34181(e)).” The aforementioned updates to the DDA reflect changes that will allow for the project to proceed and will provide for several benefits to the affected taxing entities:

- a) Expedited Property Sales – Allows property sales to occur sooner rather than later. Proceeds from property sales distributed to affected taxing entities.
- b) Development Impact Fees – Properties are being sold for development, not speculation, resulting in projects that will generate impact fees for taxing entities.
- c) On-Going Property Tax Revenues – Development of properties sold will result in additional property tax revenue into perpetuity to the affected taxing entities.
- d) Developer Reinvestment Effect – The reinvestment of profit from the residential component of the project is anticipated to spur development of commercial components that might not otherwise be economically feasible.
- e) Repayment of \$500,000 Line of Credit – Allowing the project to proceed will allow MSW Partners to commence with residential development, which is the funding mechanism to repay the line of credit. If the DDA were terminated, repayment of the line of credit would be at risk.

The Oversight Board is scheduled to consider the item on October 9, 2014, if the Successor Agency authorized the execution of the 4th Amendment.

DDA Extension

As previously mentioned, the current term of the DDA expires on October 17, 2014. Should the Successor Agency approve the 4th Amendment, the Oversight Board is scheduled to consider the

item on October 9, 2014. The DOF would then have approximately 65 days from the date the OB resolution is delivered to review.

Pursuant to Part Two, Article 3.04(C) of the original DDA, the Executive Director may extend times of performance in writing by mutual agreement of the Developer and the Executive Director, unless the Executive Director refers the matter of extension to the Agency Board. Further, pursuant to Part Two, Article 3.23 of the original DDA, Agency staff is authorized to execute changes to the DDA that would not substantially alter the basic business terms of the DDA. By simply extending the term of the DDA through January 31, 2015, no changes to the business terms of the DDA are proposed. However, in light of the dissolution process, and consistent with past practice in dealing with extensions, Agency Legal Counsel recommended this extension be considered by the Successor Agency, and approved by the Oversight Board. Thus, it would be prudent to also extend the term of the DDA through January 31, 2015 (with no changes to business terms) to allow for the review process associated with the 4th Amendment to conclude.

Conclusion

Staff recommends the Agency approve the authorization of the 4th Amendment and authorize the extension the DDA to allow the term of the DDA to extend through the approval process. It should be noted that additional risk associated with the lawsuit filed by MSW Partners should be expected in the event a 4th Amendment is not ultimately approved.

RECOMMENDATION: Staff recommends that the Successor Agency:

1. Open the public hearing and take public comment; and
2. Close the public hearing; and
3. Adopt Agency Resolution No. SA2014 - __: Authorizing the Executive Director to Extend the Term of the Main Street West Disposition and Development Agreement (DDA); and
4. Adopt Agency Resolution No. SA2014 - __: Approving and Authorizing the Execution of the Fourth Amendment to the Disposition and Development Agreement (DDA) with Main Street West Partners, LLC.

ATTACHMENTS:

1. Property ID Map.
2. 4th Amendment Document.
3. Agency Resolution No. SA2014 - __: Authorizing the Executive Director to Extend the Term of the Main Street West Disposition and Development Agreement (DDA).
4. Agency Resolution No. SA2014 - __: Approving and Authorizing the Execution of the Fourth Amendment to the Disposition and Development Agreement (DDA) with Main Street West Partners, LLC.

RESOLUTION NO. SA 2016 -__

A RESOLUTION OF THE CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY AUTHORIZING EXECUTIVE DIRECTOR TO EXECUTE SETTLEMENT AGREEMENT OF MAIN STREET WEST PARTNERS LITIGATION AND DIRECTING THE EXECUTIVE DIRECTOR TO FORWARD THE EXECUTED SETTLEMENT AGREEMENT TO THE OVERSIGHT BOARD FOR APPROVAL.

WHEREAS, the Redevelopment Agency of the City of Suisun City (the “RDA”) entered into a Disposition and Development Agreement (the “DDA”) with Main Street West Partners (the Developer) dated April 17, 2006; and

WHEREAS, said DDA has been revised from time to time by Amendments Nos. 1 – 3; and

WHEREAS, following dissolution of the RDA, the Successor Agency (the “Agency”) became the successor-in-interest to all assets and obligations of the RDA, including the DDA; and

WHEREAS, the expiration date of the DDA was February 19, 2014. On January 17, 2014, the Oversight Board to the Successor Agency (“Oversight Board”) approved a 120-day extension to the expiration date of the DDA in Resolution No. OB 2014-01 (“First Extension”); and

WHEREAS, on January 21, 2014, the California State Department of Finance (“Finance”) initiated review of the First Extension pursuant to Health & Safety Code section 34179, subdivision (h); and

WHEREAS, on February 10, 2014, the Developer filed a Complaint for Validation under Code of Civil Procedure Section 863 and for Declaratory Relief in Solano County Superior Court, entitled *Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.*, Solano County Superior Court Case No. FCS043017 (“Original Action”); and

WHEREAS, on February 28, 2014, Finance approved the First Extension. The Oversight Board subsequently approved further extensions to the expiration date of the DDA in Resolution Nos. OB 2014-04 (“Second Extension”), and OB 2014-07 (“Third Extension”). Finance approved the Second and Third Extensions; and

WHEREAS, on or about April 11, 2014, Finance appeared in the Original Action pursuant to Code of Civil Procedure section 863 and moved to transfer venue to Sacramento County Superior Court; and

WHEREAS, on or about May 22, 2014, the Solano County Superior Court entered an order transferring the Original Action to Sacramento County Superior Court, which assigned it Case No. 34-2014-00164737. On or about October 1, 2014, Main Street filed a First Amended Complaint for Declaratory Relief, Impairment of Contract, and Petition for Writ of Mandate in *Main Street West Partners, LLC v. Successor Agency of the Redevelopment Agency of the City of Suisun City, et al.*, Sacramento Superior Court, Case No. 34-2014-00164737 (“**Action**”); and

WHEREAS, on or about October 15, 2014 the Oversight Board approved another extension to the expiration date of the DDA in Resolution No. OB 2014-11 (“Fourth Extension”) and approved various amendments to the DDA in Resolution No. OB 2014-12. On October 22,

2014, Finance initiated review. On December 1, 2014, Finance approved the Fourth Extension, but did not approve OB 2014-12; and

WHEREAS, on or about January 8, 2015, the Oversight Board notified Finance of its Resolution Nos. OB 2015-01, which approved a further extension of the DDA, and OB 2015-02, which approved various amendments to the DDA. Finance initiated review of OB 2015-01 and OB 2015-02 pursuant to Health & Safety Code section 34179, subdivision (h), and, on February 18, 2015, sent the Oversight Board a letter stating that it did not approve OB 2015-01 and OB 2015-02; and

WHEREAS, on April 10, 2015, the Successor Agency requested that Finance reconsider its February 18, 2015, determination regarding OB 2015-01 and OB 2015-02, and provided further documentation and information in support of the request; and

WHEREAS, Finance has reviewed the request for reconsideration and the additional documentation and information provided in connection therewith; and

WHEREAS, without admission of fault or wrongdoing, by entering into the Proposed Settlement Agreement (the "Agreement"), the Parties have agreed to completely resolve any and all disputes between the Parties pertaining to the Action.

WHEREAS, The litigation resolved by the Agreement relates to the wind down of the RDA pursuant to Assembly Bill 26 of the 2011-12 First Extraordinary Session of the California Legislature ("AB x1 26") and Assembly Bill 1484 of the 2011-12 Regular Session of the California Legislature ("AB 1484") (AB x1 26 and AB 1484, collectively the "Dissolution Law").

NOW, THEREFORE, THAT THE CITY COUNCIL ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SUISUN CITY DOES RESOLVE AS FOLLOWS:

Section 1. The above recitals are true and correct.

Section 2. The Settlement Agreement in substantially the form on file with the Secretary of the Agency is hereby approved. The Executive Director of the Successor Agency (or designee) is hereby authorized on behalf of the Agency to execute the Settlement Agreement, subject to necessary approvals from the Oversight Board and Finance, and to make revisions to said which do not materially or substantially increase the Agency's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Settlement Agreement.

PASSED AND ADOPTED at a special meeting of the City Council Acting as Successor Agency to the Redevelopment Agency of the City of Suisun City duly held on Tuesday, the 12th day of January 2016, by the following vote:

AYES:	Boardmembers:	_____
NOES:	Boardmembers:	_____
ABSENT:	Boardmembers:	_____
ABSTAIN:	Boardmembers:	_____

WITNESS my hand and the seal of said City this 12th day of January 2016.

Linda Hobson, CMC
Secretary