OVERSIGHT BOARD FOR SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY
REGULAR MEETING AGENDA

City of Victorville
14343 Civic Drive, Conference Room "D"
Victorville, CA 92392

Thursday, July 14, 2016
1:30 P.M.

CALL TO ORDER

ITEM 1 PUBLIC COMMENT

DISCUSSION AGENDA

ITEM 2 APPROVE MINUTES FROM FEBRUARY 25, 2016 MEETING.

ITEM 3 RESOLUTION NO. OB-VRDA-16-004 OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY APPROVING THE AGREEMENT TO TERMINATE AND RELEASE OWNER PARTICIPATION AGREEMENT – CIVIC ROGERS LLC AND AMROYCIV

ITEM 4 COMMENTS FROM OVERSIGHT BOARD, LEGAL COUNSEL AND STAFF

ITEM 5 ADJOURNMENT

MINUTES OF THE
REGULAR MEETING OF THE
OVERSIGHT BOARD FOR SUCCESSOR AGENCY
TO THE VICTORVILLE REDEVELOPMENT AGENCY
February 25, 2016

CALL TO ORDER

The regular meeting of the Oversight Board for the Successor Agency to the Victorville Redevelopment Agency was called to order at 1:30 p.m. by Chairman Metzler in Conference Room "D", Victorville City Hall, at 14343 Civic Drive, Victorville, California.

ROLL CALL

PRESENT: Board Members Debbie Betts, Karen Hardy, Janice Lindsay, Keith Metzler, Mary O'Toole, Doug Robertson and Anita Tuckerman

ABSENT: None

Also present was Economic Development Administrator, Sophie Smith; Varner & Brandt, Attorney, Nathan Heyde, and Recording Secretary, Heidi Roche.

1. PUBLIC COMMENT

There was no public comment.

DISCUSSION AGENDA

2. APPROVE MINUTES FROM DECEMBER 17, 2015 AND JANUARY 21, 2016 MEETINGS

It was moved by Board Member O'Toole, seconded by Board Member Lindsay to approve; motion carried with Board Member Hardy absent.

3. RESOLUTION NO. OB-VRDA-16-002 OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY APPROVING AMENDMENT 1 TO PROFESSIONAL SERVICES AGREEMENT WITH VARNER & BRANDT FOR OVERSIGHT BOARD LEGAL SERVICES

Ms. Smith reported that the current agreement with Varner & Brandt was on a month to month basis and that by approving Resolution No. OB-VRDA-16-002, the agreement would be extended through the 2017 ROPS submission.

It was moved by Board Member Robertson, seconded by Board Member Tuckerman to adopt Resolution No. OB-VRDA-16-002; motion carried with Board Member Hardy absent.

4. RESOLUTION NO. OB-VRDA-16-003 OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY APPROVING A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY AND THE CITY OF VICTORVILLE FOR THE AUTO PARK SIGN PROPERTIES

Board Member Hardy arrived at 1:35 p.m.

Ms. Smith reported that the Department of Finance approved the Long Range Property Management Plan and thereby approved the distribution of property assets included in the plan. The auto park sign properties are subject to use restrictions that affect the marketability of the property. The properties were appraised at $8,400.00, the fair market price of the land minus improvements. The Successor Agency is seeking to sell these properties to the City of Victorville who will facilitate the continued use of the property in connection with the advertising needs of the auto park and public service announcements.

Discussion ensued regarding the viability of selling the properties for the appraised price of the land as well as the price of the improvements made to the land (the electronic billboards) in the amount of approximately $271,000.

It was determined that due to the land use restrictions and CalTrans permitting restrictions, that the City would be the only viable purchaser of the property.

It was moved by Board Member Lindsay, seconded by Board Member Robertson to adopt Resolution No. OB-VRDA-16-003 contingent to the inclusion of the required indemnity language as suggested by counsel; motion carried with Board Members Hardy and Tuckerman voting no.

5. COMMENTS FROM OVERSIGHT BOARD LEGAL COUNSEL AND STAFF

There were no comments.

6. ADJOURNMENT

It was moved by Board Member Tuckerman, seconded by Board Member Hardy to adjourn the meeting at 2:20 p.m.; motion carried unanimously.

_____

CHAIRMAN OF THE BOARD OF ADMINISTRATORS

ATTEST:

_____

RECORDING SECRETARY

VARNER&BRANDT LLP

CLIENT MEMORANDUM

TO: OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY

FROM: VARNER & BRANDT LLP

SUBJECT: TRANSMITTAL OF JULY 14, 2016 OVERSIGHT BOARD MEETING AGENDA ITEM #3

DATE: JULY 1, 2016

The following memorandum provides the members of the Oversight Board ("Oversight Board") for the Successor Agency to the Victorville Redevelopment Agency ("Successor Agency") with pertinent information in order for each Board Member to make an informed decision on the matters before the Oversight Board.

Agenda Item No.: 3

Subject: ***Approval of Agreement to Terminate and Release Owner Participation Agreement***. The Successor Agency seeks the approval of the Oversight Board to approve the execution of an Agreement to Terminate and Release Owner Participation Agreement ("Termination Agreement") concerning that certain Owner Participation Agreement, dated November 18, 2008 ("Original OPA"), as amended by that certain First Amendment to Owner Participation Agreement dated August 18, 2009 ("First Amendment"), as amended by that Second Amendment to Owner Participation Agreement dated September 22, 2010 ("Second Amendment") (collectively, the "OPA").

Legislative Authority of the Oversight Board:

1. *California Health and Safety Code Section 34171(d)(1)(E)*: The Successor Agency, with the approval or at the direction of the Oversight Board, or the Oversight Board itself may terminate any existing agreements or contracts and provide any necessary and required compensation or remediation for such termination.

2. *California Health and Safety Code Section 34177(c)*: The Successor Agency must perform obligations required pursuant to any enforceable obligation.

3. *California Health and Safety Code Section 34177(h)*: The Successor Agency must expeditiously wind down the affairs of the former redevelopment agency in accordance with the direction of the Oversight Board.

4. *California Health and Safety Code Section 34181(e)*: The Oversight Board must direct the Successor Agency to determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the Oversight Board for approval. The

Oversight Board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.

Discussion: The Successor Agency staff report, included with your Oversight Board materials, provides a brief background summary regarding the OPA.

The former redevelopment agency agreed to provide monetary assistance (or reimbursement) to the original developer (referred to as the "Participant" in the Original OPA) in an amount not to exceed $5,500,000.00 for the installation of certain public improvements identified in Exhibit B of the OPA. Section 3 of the OPA identifies the various distribution amounts for the specified public improvements. The obligation of the former redevelopment agency to provide monetary reimbursement is expressly conditioned on the Participant substantially completing each applicable phase of the project within certain specified performance dates. If the Participant (or its successors) fails to substantially complete any phase within the specified time, the Participant (or its successors) must repay a portion of the funds received.

According to Section 5(b) of the OPA:

> "*...in the event Participant fails to substantially complete any portion of the Project, within the required time-frames set forth below and in the Schedule of Performance, Participant shall repay the Agency a pro rata portion of the Agency Assistance disburse relating to the construction of the Public Improvements; subject to adjustments if not all Agency Assistance is disbursed as provided below. Such pro rata portion shall be determined as follows: (i) to the extent the Participant fails to cause substantial completion of Phase 2A prior to December 31, 2012, Participant shall repay to the Agency thirty-five percent (35%) of the Agency Assistance; (ii) to the extent Participant fails to cause substantial completion of Phase 2B prior to December 31, 2012, Participant shall repay to the Agency twenty-three percent (23%) of the Agency Assistance; (iii) to the extent Participant fails to cause substantial completion of Phase 3A prior to December 31, 2010, Participant shall at such time repay to the Agency two percent (2%) of the Agency Assistance; (iv) to the extent Participant fails to cause substantial completion of Phase 3B prior to December 31, 2011, Participant shall at such time repay to the Agency eighteen percent (18%) of the Agency Assistance; and (v) to the extent Participant fails to cause substantial completion of Phase 4B prior to December 31, 2011, Participant shall at such time repay to the Agency twenty-two percent (22%) of the Agency Assistance.*"

Due to difficult economic and market conditions, on January 30, 2012, the parties agreed to extend the planned timeline for the project by an additional four (4) years.

The Successor Agency staff confirmed that approximately $992,580.00 was paid by the former redevelopment agency to the Participant for completion of certain off-site public improvements. The Participant (or its successor) previously repaid approximately $19,852.00 to the Successor Agency for failure to substantially complete Phase 3A by December 31, 2014 (based on the extended time). Since substantial completion of Phase 3B and Phase 4B did not occur by December 31, 2015 (based on the extended time), the Successor Agency is entitled to receive repayment from Participant (or its successor) of an additional portion of the financial assistance equal to approximately $389,091.00.

The Participant contends that the economic downturn has rendered the project no longer economically feasible and completion of the project in accordance with the OPA can no longer be achieved. As a consequence, the Participant is seeking termination of the OPA.

Similarly, the Successor Agency staff evaluated the OPA and also believes that completion of the project pursuant to the OPA is no longer feasible. Although the Successor Agency staff recognizes that the Successor Agency may be eligible for reimbursement of certain sums paid to the Participant, staff has determined that efforts to recoup such reimbursable amounts will require significant time and financial resources, and ultimately likely require protracted litigation. Finally, Successor Agency staff believes that despite the project not reaching full completion, the City of Victorville and the Successor Agency have received the benefit of significant public improvements and increased tax revenues from those portions of the project that have been completed. Therefore, Successor Agency staff recommends termination of the OPA.

The Successor Agency may identify an agreement that otherwise qualifies as an enforceable obligation and seek termination of that agreement. The authority and approval to terminate an identified agreement requires the consent of the Oversight Board. (Health and Safety Code section 34171(d)(1)(E)) It is the responsibility of the Oversight Board to review the agreement, including the circumstances surrounding the agreement, and determine if termination is in the best interest of the taxing entities. With the matter at hand, if the OPA remains effective, the terms of the OPA would likely need to be amended to afford additional time for the development and the Successor Agency's corresponding obligation to reimburse the Participant (or its successor) would remain a continuing liability. Assuming the time for performance under the OPA is extended, the Successor Agency's remaining reimbursement obligation amount owed under the OPA is approximately $4,000,000.00. The Oversight Board must evaluate and consider whether it is in the best interest of the taxing entities (financially or otherwise) to either terminate the OPA or to not terminate the OPA and pursue repayment from the developer (i.e., current developer) of a portion of the amount previously paid by the former redevelopment agency and pursue such other remedies available under the OPA resulting from the developer's breach.

We have reviewed the proposed Termination Agreement, a copy of which is included with your Oversight Board materials. The Termination Agreement is limited to the termination of the rights, obligations, and liabilities of the parties under the Original OPA. The agreement contains a general release which covers the City of Victorville and the Successor Agency. The Oversight Board may consider broadening the general release to also include the Oversight Board and also broaden the scope of the release to include the more far-reaching language of a Section 1542 waiver.

END OF MEMO

RESOLUTION NO. OB-VRDA-16-004

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY, APPROVING THE TERMINATION OF THE OWNER PARTICIPATION AGREEMENT, DATED NOVEMBER 18, 2008, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO OWNER PARTICIPATION AGREEMENT DATED AUGUST 18, 2009, AS AMENDED BY THAT SECOND AMENDMENT TO OWNER PARTICIPATION AGREEMENT DATED SEPTEMBER 22, 2010 AND AUTHORIZING THE EXECUTION OF AN AGREEMENT TO TERMINATE AND RELEASE OWNER PARTICIPATION AGREEMENT

WHEREAS, the Successor Agency to the Victorville Redevelopment Agency was formed in accordance with California Health and Safety Code Section 34173 ("Successor Agency"); and

WHEREAS, the Oversight Board ("Oversight Board") of the Successor Agency was established pursuant to California Health and Safety Code Section 34179; and

WHEREAS, the Successor Agency must perform obligations required pursuant to any enforceable obligation pursuant to California Health and Safety Code Section 34177(c); and

WHEREAS, the former redevelopment agency and WPI Development 1, Inc. ("WD1") and WPI Development 2, Inc. ("WD2") (collectively, the "Participant"), entered into that certain Owner Participation Agreement, dated November 18, 2008 ("Original OPA") for the purpose of redeveloping certain real property consisting of approximately fifty-six (56) acres located in the City of Victorville (the "Property"); and

WHEREAS, the Original OPA requires the Participant to develop the Property as a commercial retail center and the former redevelopment agency agreed to provide financial reimbursements to the Participant for certain off-site public improvements that the Participant is required to install pursuant to the Original OPA; and

WHEREAS, the Original OPA was amended by that certain First Amendment to Owner Participation Agreement dated August 18, 2009 ("First Amendment"), wherein WD1 assigned all of its interest under the Original OPA to Civic-Rogers, LLC and WD2 assigned all of its interest under the Original OPA to Amroyciv, LLC and the former redevelopment agency consented to the transfer of a portion of the Property to In-N-Out Burgers; and

WHEREAS, the Original OPA, as amended by the First Amendment, was amended by that certain Second Amendment to Owner Participation Agreement dated September 22, 2010 ("Second Amendment"), wherein the former redevelopment agency consented to the transfer of a

portion of the Property to CFT Developments, LLC (the Original OPA, the First Amendment and the Second Amendment are collectively referred to as the "OPA"); and

WHEREAS, the Successor Agency, with the approval or at the direction of the Oversight Board, or the Oversight Board itself, may terminate any existing agreements or contracts and provide any necessary and required compensation or remediation for such termination pursuant to California Health and Safety Code Section 34171(d)(1)(E); and

WHEREAS, the Successor Agency has determined that performance under the OPA is no longer economically feasible and that termination of the OPA and all obligations therein, is in the best interest of all parties; and

WHEREAS, the Successor Agency seeks the approval and consent of the Oversight Board to terminate the OPA and to execute that certain Agreement to Terminate and Release Owner Participation Agreement (the "Termination Agreement"), a copy of which has been made available to the Oversight Board for inspection and is attached hereto as Exhibit A reflecting the termination of the OPA and all obligations therein; and

WHEREAS, the Oversight Board has determined that the termination of the OPA and the execution of the Termination Agreement by the Successor Agency is consistent with the authority granted pursuant to Health and Safety Code Section 34181(e), and is consistent with the obligation of the Successor Agency to wind down the affairs of the former redevelopment agency in accordance with California Health and Safety Code Section 34177(h); and

WHEREAS, California Health and Safety Code Section 34179(e) requires the Oversight Board to adopt resolutions for any action taken by the Oversight Board.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board as follows:

Section 1. **Approval to Terminate OPA and Authorization to Execute the Termination Agreement**. The Oversight Board hereby approves the termination of the OPA and authorizes the Successor Agency to execute the Termination Agreement.

Section 2. **Authorization of Successor Agency**. Upon approval of this resolution ("Resolution") by the California Department of Finance, the Oversight Board authorizes and directs the Executive Director and/or Assistant Secretary of the Successor Agency, jointly and severally, to execute and deliver the Purchase Agreement, in substantially the form made available to the Oversight Board for inspection, and any and all other documents which they may deem necessary or advisable in order to effectuate the approval of the Resolution.

Section 3. **Delivery to the California Department of Finance**. The Oversight Board hereby authorizes and directs the Secretary of the Oversight Board to electronically deliver a copy of this Resolution to the California Department of Finance in accordance with California Health and Safety Code Section 34179(h).

Section 4. **Other Actions**. The Oversight Board hereby authorizes and directs the Chairman, Vice Chairman and/or Secretary of the Oversight Board, jointly and severally, to do

any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to effectuate the purposes of this Resolution, and such actions previously taken by such officers are hereby ratified and confirmed.

Section 5. **CEQA**. The Oversight Board, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this Resolution is exempt from the requirements of the California Environmental Quality Act ("CEQA") in that it is not a "project," but instead consists of the continuation of a governmental funding mechanism for potential future projects and programs, and does not commit funds to any specific project or program.

Section 6. **Effect**. This Resolution shall take effect in accordance with California Health and Safety Code Section 34179(h).

Section 7. **Certification**. The Oversight Board Secretary shall certify to the passage and adoption of this Resolution; shall enter the same in the book of original Resolutions of the Oversight Board; and shall make a minute of passage and adoption thereof in the records of the proceedings of the Oversight Board, in the minutes of the meeting at which this Resolution is passed and adopted.

RESOLUTION NO. OB-VRDA-16-004
ATTACHMENT A
TERMINATION AGREEMENT
[ATTACHED BEHIND THIS PAGE]

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
Successor Agency to the)
Victorville Redevelopment Agency)
14343 Civic Drive)
Victorville, CA 92392)
Attn: Economic Development Administrator)
)

(Space Above for Recorder's Use)
Exempt from recording fees pursuant to Government Code Section 27383

AGREEMENT TO TERMINATE AND RELEASE OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT TO TERMINATE AND RELEASE OWNER PARTICIPATION AGREEMENT (this "Agreement") is entered into this _____ of _____, _____ (the "Effective Date") by and among the **SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY** ("Successor Agency") and **CIVIC-ROGERS, LLC**, a California limited liability company ("Civic-Rogers") and **AMROYCIV, LLC**, a California limited liability company ("Amroyciv"). CIVIC-ROGERS and AMROYCIV may hereinafter be collectively referred to as "Developer". The SUCCESSOR AGENCY, CIVIC-ROGERS and AMROYCIV are sometimes hereinafter individually referred to as a "Party" and sometimes hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the former Victorville Redevelopment Agency ("Former RDA") previously entered into that certain Owner Participation Agreement with WPI Development 1, Inc., a California corporation ("WD1") and WPI Development 2, Inc., a California corporation ("WD2") (collectively, the "Participant"), dated as of November 18, 2008, and recorded as Document No. 2009-0249852 in the Official Records of the County of San Bernardino, California (the "Original OPA") for the purposes of redeveloping certain real property consisting of approximately fifty-six (56) acres in the City of Victorville (the "City"), all as more fully described in the Original OPA and incorporated herein by this reference (the "Property"); and

WHEREAS, the Former RDA, Participant, Civic-Rogers, Amroyciv and In-n-Out Burgers, a California corporation ("INO") previously entered into that certain First Amendment to the Original OPA dated as of August 18, 2009, and recorded as of September 4, 2009 as Document No. 2009-0392026 in the Official Records of the County of San Bernardino, California (the "First Amendment"), wherein: 1) WD1 assigned all of its interest under the Original OPA to Civic-Rogers,

and WD2 assigned all of its interests under the Original OPA to Amroyciv, and Civic-Rogers and Amroyciv, respectively, assumed such interests; and 2) the Former RDA consented to the transfer of a portion of the Property to INO in accordance with the terms and conditions of the First Amendment; and

WHEREAS, Civic-Rogers, Amroyciv and CFT Developments, LLC, a California limited liability company, and the Former RDA entered into that certain Second Amendment to Owner Participation Agreement, dated as of September 22, 2010, and recorded as Document No. 2010-0467124 in the San Bernardino County Recorder's Office (the "Second Amendment"), which Second Amendment amended that certain Original OPA and the First Amendment; and

WHEREAS, pursuant to the Original OPA, First Amendment and Second Amendment, the Former RDA agreed to provide certain assistance (the "Agency Assistance") with respect to the development of a project as more fully described in the Original OPA (the "Project") by reimbursing Participant and its successors in interest for certain costs associated with the installation of certain off-site public improvements required to be installed by Participant and its successors in interest as a condition of the City's approval of the Participant's site plan and parcel map for the Project (the "Public Improvements"); and

WHEREAS, as of February 1, 2012, the Former RDA was dissolved by virtue of Health & Safety Code Section 34172, and all authority, rights, powers, duties, and obligations previously vested with the Former RDA (except for the Former RDA's housing assets and functions), under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq., the "CRL"), including the Former RDA's rights, powers and duties under the OPA, have been vested in the Successor Agency under Health and Safety Code Section 34173; and

WHEREAS, pursuant to Health and Safety Code Section 34171 (d) (1) (E), the Successor Agency, with the approval or at the direction of the Oversight Board for the Successor Agency to the Victorville Redevelopment Agency ("OB"), may terminate any existing agreements or contracts; and

WHEREAS, pursuant to Health & Safety Code Section 34181, the OB has the ability to:

> " (e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities."; and

WHEREAS, due to the legal and financial impacts of Assembly Bill No. 1x26 (Ch 5, filed with the Secretary of State June 28, 2011) ("AB 26") and Assembly Bill No. 1484 (Ch 26, filed

with the Secretary of State June 27, 2012) ("AB 1484"), it is no longer feasible for the Parties to implement the terms of the Original OPA, as amended, and the Parties desire to terminate the Original OPA, as amended, and all the rights and obligations of parties to the Original OPA, as amended, under the terms of this Agreement; and

WHEREAS, the obligations of the Former RDA to provide Agency Assistance has been listed on the Successor Agency's 2016-2017 Recognized Obligation Payment Schedule (July 1, 2016 through June 30, 2017), approved by the Successor Agency indicates that pursuant to the Original OPA, the outstanding obligation of debt amounted to $4,507,420.00, which outstanding obligation of debt would otherwise remain in place until all of the obligations under the Original OPA were deemed satisfied in full; and

WHEREAS, the Parties deem it appropriate to enter into this Agreement to Terminate and Release Owner Participation Agreement in order to eliminate such outstanding debt obligation, especially in light of the fact that as a result of the global economic recession, the ability of Participant and its successors in interest to complete the Project in accordance with the terms of the Original OPA are impractical, if not impossible; and

WHEREAS, the Parties further deem it appropriate to enter into this Agreement to Terminate and Release Owner Participation Agreement based on the following facts and circumstances:

(a) A certain amount of commercial development has been completed to date pursuant to the terms of the Original OPA, which has already provided a significant benefit to the community:
   i. Through the generation of significant tax increment revenues and sales tax revenues attributable to new projects including Winco Foods, Walgreens/CVS, In-n-Out Burger, Wells Fargo Bank, Krispy Kreme, and Panda Express; and
   ii. Through the creation of jobs related thereto.

(b) Substantial Public Improvements have been completed, including pavement, grading and signage along Roy Rogers Drive, Midtown Drive and Civic Drive, including the installation of fire hydrants and sewer laterals, as well as installation of water, electricity, natural gas and telephone infrastructure. As such, the Former RDA has received a benefit greater than, or at least equal to, the amounts contributed by the Former RDA as part of the Agency Assistance.

WHEREAS, pursuant to the terms of the Original OPA, the Participant and its successors in interest would have been obligated to repay a portion of any Agency Assistance received to the extent it had not completed various phases of the Project subject to any extensions of time that would have been granted by the Former RDA's Director of Economic Development; and

WHEREAS, pursuing any possible remedies that the Successor Agency may otherwise have under the Original OPA, including but not limited to seeking repayment of a portion

of the Agency Assistance, would be extremely complicated and would likely require extensive and expensive litigation based on a very diverse ownership currently controlling the Property, including but not limited to Civic-Rogers, LLC, LA-DF Valley Center, LLC, R.Y. Properties, Inc., WPI-Civic, LLC, WPI-Rogers, LLC, Amroyciv, LLC, WPI-Armagosa, LLC, LA-DF Investment Fund 9, LLC, D-F Pacific No. 2, LP, and WPI-Armagosa, LLC. As such, the costs of pursuing any remedies outweighs any possible benefits that may be realized in taking such a course of action.

NOW, THEREFORE, the Parties do hereby agree as follows:

Section 1. Recitals.

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

Section 2. Defined Terms.

Except as otherwise provided herein, all terms not otherwise defined in this Agreement shall have the same meanings ascribed to those terms in the Original OPA.

Section 3. Termination of OPA.

As a result of the benefits described in the Recitals hereof, the Parties do hereby acknowledge and agree that the Original OPA, as amended, is hereby terminated by mutual agreement of the Parties as of the Effective Date, and is of no force or effect. The Parties further agree that all redevelopment covenants, except for those pertaining to discrimination, shall also be terminated simultaneously herewith.

Section 4. Effect of Agreement.

This Termination Agreement is binding only as to the rights, obligations and liabilities of the parties to this Agreement and their successors and assigns.

Section 5. Release and Waiver.

Upon the Effective Date of this Agreement, Developer on behalf of itself and its successors and assigns, waive, release and forever discharge the Successor Agency, the City and their respective members, officers, employees, agents, contractors and consultants, from any and all claims, debts, liabilities, obligations, and causes of action, whether known or unknown, suspected or unsuspected, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) arising out of or in any way connected with the Original OPA, as amended, that Developer may now have against the Successor Agency and/or the City arising out of or relating to the Original OPA, as amended.

Upon the Effective Date of this Agreement, Successor Agency, on behalf of itself and its successors and assigns, waive, release and forever discharge Developer and its respective

members, officers, employees, agents, contractors and consultants, from any and all claims, debts, liabilities, obligations, and causes of action, whether known or unknown, suspected or unsuspected, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorneys' fees) caused by the Successor Agency arising out of or relating to the Original OPA, as amended.

Section 6. General Provisions.

6.1 Entire Agreement. This Agreement (including Exhibits attached) constitutes the entire agreement and understanding between the Parties with respect to the subject matter contained herein, and supersedes any prior agreement and understanding about the subject matter hereof. This Agreement may only be modified or amended by a written instrument executed by the Parties.

6.2 Headings. The subject headings of the Sections and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

6.3 Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

6.4 Successors and Assigns. Each covenant and condition contained in this Agreement shall inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, personal representatives, successors and assigns.

6.5 Attorneys' Fees; Costs of Litigation. If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled, including the fees and costs incurred in enforcing any judgment which may be obtained in said action.

6.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6.7 Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation". This Agreement shall be interpreted as though prepared jointly by the Parties.

6.8 Further Assurances. The Parties shall, without cost or expense to any other party, timely execute any documents and/or provide any further assurances reasonably requested by the another Party to effectuate the intent of this Agreement.

Section 7. Conflict of Interest. No member, official or employee of Regional Center or the Successor Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested.

Section 8. Legal Advice. Each Party represents and warrants to the others the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of another Party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

Section 9. Execution and Recordation.

9.1 Following the execution of this Agreement by Developer and prompt delivery thereafter to the Successor Agency, this Agreement must be approved by the appropriate parties pursuant to the CRL as amended by AB 26 and AB 1484, and thereafter executed and delivered by the Successor Agency to Developer, in order to be effective or enforceable against the Successor Agency.

9.2 The term "Effective Date" as used herein shall have the following meaning, pursuant Health and Safety Code Section 34179 (h), the effective date of this Agreement shall be the date that is *five business days* after notice of this Agreement is provided to the Department of Finance ("DOF"), unless DOF requests a review; provided, however, in the event DOF requests a review, it shall have *forty (40) business days* to review the Agreement, and the Effective Date shall be the date DOF has sent written notice of its approval of this Agreement to the Successor Agency and the Oversight Board ("OB") has taken all required actions pursuant to Health and Safety Code Section 34179 (h) and other applicable Sections of the CRL. If DOF rejects this Agreement, this Agreement shall become null and void.

In the event DOF takes no action, this Agreement shall become effective and the OPA, as amended, shall be deemed terminated. It is understood by the Parties that the Successor Agency is limited by AB 26 and AB 1484 and any further legislation that may arise that affects this Agreement.

9.3 On and after the Effective Date, the Parties agree to promptly record this Agreement in the Office of the County Recorder for San Bernardino County.

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[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth opposite their signatures.

"SUCCESSOR AGENCY"
SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY

Date: _____

By: _____
Gloria Garcia
Chairman

ATTEST:

_____
Carolee Bates
Successor Agency Secretary

APPROVED AS TO FORM:

_____
Andre de Bortnowsky
Successor Agency Counsel

SUCCESSOR AGENCY TO THE VICTORVILLE REDEVELOPMENT AGENCY RISK MANAGER

_____
Chuck Buquet

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CIVIC-ROGERS, LLC,
a California limited liability company

By: WPI-Civic, LLC, a California limited liability company, its Manager

By: _____
John Young, Manager

By: _____
Andrew Sun, Manager

By: LA-DF Valley Center, LLC, a California limited liability company, its Co-Manager

By: R.Y. Properties, Inc., a California corporation, its Managing Member

_____
By: Robert Yu, President

WPI-CIVIC, LLC
a California limited liability company

By: _____
John Young, Manager

By: _____
Andrew Sun, Manager

LA-DF VALLEY CENTER, LLC,
a California limited liability company

By: R.Y. Properties, Inc., its Managing Member

By: _____
Robert Yu, President

WPI-ROGERS, LLC
a California limited liability company

By: _____
Andrew Sun, Manager

JOHN YOUNG

_____

ANDREW SUN

_____

ROBERT YU

_____

LA-DF VALLEY CENTER, LLC,
a California limited liability company

By: R.Y. Properties, Inc., its Managing Member

By: _____
Robert Yu, President

WPI-KB/EASTERN, LLC,
a Nevada limited liability company

By: WPI-Stephanie/Horizon, LLC,
a Delaware limited liability company,
its Manager

By: _____
Andrew Sun, Member

By: _____
John Young, Member

AMROYCIV, LLC
a California limited liability company

By: WPI-Amargosa, LLC, a California limited
liability company, its Manager

By: _____
John Young, Manager

By: _____
Andrew Sun, Manager

By: R.Y. Properties, Inc.,
a California corporation, its Co-Manager

By: _____
Robert Yu, President

LA-DF VALLEY CENTER, LLC,
a California limited liability company, Member

By: R.Y. Properties, Inc., its Managing Member

By: _____
Robert Yu, President

D-F PACIFIC NO. 2., L.P.,
a Texas limited partnership, Member

By: D-F Pacific No. 2 GP, LLC, its General Partner

By: _____
Robert Yu, Manager

LA-DF INVESTMENT FUND 9, LLC,
a California limited liability company, Member

By: R.Y. Properties, Inc., its Managing Member

By: _____
Robert Yu, President

WPI-AMARGOSA, LLC
a California limited liability company, Member

By: _____
John Young, Manager

By: _____
Andrew Sun, Manager

JOHN YOUNG

_____

ANDREW SUN

_____

ROBERT YU

_____

EXHIBIT "A"

LEGAL DESCRIPTION
PROPERTY APN'S

STATE OF CALIFORNIA

SAN BERNARDINO COUNTY

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

STATE OF CALIFORNIA

SAN BERNARDINO COUNTY

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

CITY OF
VICTORVILLE

(760) 955-5000
E-mail: vville@victorvilleca.gov

14343 Civic Drive
P.O. Box 5001
Victorville, CA 92393-5001

AGENDA ITEM

SUCCESSOR AGENCY TO THE
VICTORVILLE REDEVELOPMENT AGENCY
BOARD OF DIRECTORS AND
CITY COUNCIL OF THE CITY OF VICTORVILLE

MEETING OF: JUNE 21, 2016

SUBMITTED BY: Andre de Bortnowsky
City Attorney

DATE: June 13, 2016

ATTACHED: Resolution No. R-SA-16-004

SUBJECT: **AGREEMENT TO TERMINATE AND RELEASE OWNER PARTICIPATION AGREEMENT – AMROYCIV PROPERTY**

RECOMMENDATION: That Your Honorable Board of Directors and City Council adopt Resolution No. R-SA-16-004 approving the Agreement to Terminate and Release Owner Participation Agreement

FISCAL IMPACT:

Budget Amount:
Budget Acct. No.:

--Finance Division Use Only--
Additional Appropriation:

____No
____Yes/$ Amt.:

Admin. Services Director Review
And Approval_____

DISCUSSION:

The former Victorville Redevelopment Agency ("Former RDA") previously entered into a certain Owner Participation Agreement with WPI Development 1 and WPI Development 2 (collectively, "the Participant") dated November 11, 2008 for the purposes of causing the redevelopment of certain property consisting of approximately 56 acres in the City of Victorville on both sides of Civic Drive, south of Roy Rogers Drive (the "Original OPA"). The OPA was subsequently amended in 2009 and the parties thereunder changed to Amroyciv and Civic-Rogers, who assumed all of the interests and obligations of the former Participant.

Under the Original OPA, the Former RDA agreed to provide certain assistance (the "Agency Assistance") with respect to the development of the Project which Project was defined as the development of approximately 596,000 square feet of a commercial retail center. The Agency Assistance was structured as a reimbursement for the costs of certain required public improvements, which reimbursements were to be made at such time as Participant had caused both the development of certain private improvements consisting of commercial buildings and the construction and installation of certain public improvements for which the reimbursements were to be provided.

While a portion of both the public and private improvements were constructed, the overall Project was essentially put on hold as a result of the impacts of the global economic recession. Then, on February 1, 2012, the Former RDA was dissolved pursuant to Assembly Bill 1x 26 (the "Dissolution Law"). At that time, development under the Original OPA was not completed and while certain extensions were previously granted, it became clear that the build out of the Project could not be completed within the time frames contemplated under the Original OPA. As of the effective date of the Dissolution Law, the Participants had received reimbursement in the amount of almost One Million Dollars ($1,000,000.00) for the public improvements which they had constructed. An additional approximately Four Million Dollars ($4,000,000.00) in public improvement reimbursements was still contemplated, based on the need for Participant to construct and install additional public improvements.

In addition to the public improvements which were in fact completed, a certain amount of commercial development was also developed pursuant to the Original OPA, including but not limited to Winco Foods, Walgreen's/CVS, In-n-Out Burger, Wells Fargo Bank, Krispy Kreme and Panda Express. Significant public improvements have been made, including pavement, grading and signage along Roy Rogers Drive, Mid-Town Drive and Civic Drive.

Given the effects of the economic recession and the dissolution of redevelopment agencies pursuant to the Dissolution Law which would prevent the Project from being completed under the terms of the Original OPA, the Successor Agency and the Participant now deem it appropriate to cause a termination of the Original OPA, as amended, and to excuse further obligations of both parties thereto.

While the Original OPA had a mechanism that required the Participant to repay a portion of any Agency Assistance it had received in the event that it did not complete the Project, the

Successor Agency has determined that trying to recoup any such amounts would be extremely costly and would likely require expensive and extensive litigation. Moreover, given that the City of Victorville and the Successor Agency have received the benefit of significant public improvements and has received tax revenues from the businesses that have been completed to date, the Successor Agency believes that it has received the benefit of its bargain. As such, the Successor Agency believes that the termination of the Original OPA, as amended, is in the best interests of all parties.

The termination of the Owner Participation Agreement, if approved by the Successor Agency, will still require approval of the Oversight Board and the Department of Finance. Accordingly, any approval of this Termination Agreement by the Successor Agency to the Victorville Redevelopment Agency will be submitted to the Oversight Board and Department of Finance for approval in order to become effective.

Staff remains available for any questions or comments you might have.

Attachments:
Resolution No. R-SA-16-004
Agreement to Terminate and Release Owner Participation Agreement

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