Agenda Of The Meeting – Oversight Board for the Successor Agency to the Redevelopment Agency of the City of National City
Council Chambers
Civic Center
1243 National City Boulevard
National City, California
Wednesday – December 19, 2012 – 3:00 P.M.

Open To The Public

Please complete a request to speak form prior to the commencement of the meeting and submit it to the Oversight Board Secretary.

It is the intention of your National City Oversight Board to be receptive to your concerns in this community. Your participation in local government will assure a responsible and efficient City of National City. We invite you to bring to the attention of the Board Chairman any matter that you desire the National City Oversight Board to consider. We thank you for your presence and wish you to know that we appreciate your involvement.

ROLL CALL

Pledge of Allegiance to the Flag by Chairman Ron Morrison

Public Oral Communications (Three-Minute Time Limit)

NOTE: Pursuant to state law, items requiring National City Oversight Board action must be brought back on a subsequent National City Oversight Board Agenda unless they are of a demonstrated emergency or urgent nature.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

It Is Requested That All Cell Phones
And Pagers Be Turned Off During The Meetings

PRESENTATIONS

OVERSIGHT BOARD ACTION

1. Approval of the Minutes of the Special Meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of National City meeting held on December 11, 2012.

PUBLIC HEARING

2. Close Public Comment session Pursuant to Health and Safety Code Section 34179.6(b) regarding the results of the Non-housing Fund Review conducted Pursuant to Health and Safety Code Section 34179.5 previously opened at the meeting convened on December 11, 2012.

OVERSIGHT BOARD ACTIONS

3. Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment approving the Due Diligence Review of the Non-housing Assets Fund, as required by the Health & Safety Code Section 34179.5, and authorizing retention of funds by the Successor Agency pursuant to Health & Safety Code Section 34179.6(c).

4. Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency authorizing the Successor Agency to accept grant deeds, execute documents including a settlement agreement, and perform actions in settlement of litigation.

Adjourn to the next regular adjourned meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency scheduled on January 16, 2013 at 3:00 p.m. in Council Chambers, Civic Center.

MINUTES OF THE SPECIAL MEETING OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF NATIONAL CITY

December 11, 2012

This Special Meeting of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of National City was called to order at 4:36 pm by Vice Chairman Paul Desrochers.

ROLL CALL
Board Members Present: Aguirre, Carson, Desrochers, Donaldson, Perri.
Absent: Hentschke, Morrison

PLEDGE OF ALLEGIANCE by Vice Chair Desrochers

PRESENTATIONS: None

OVERSIGHT BOARD ACTIONS

1. **SUBJECT:** Approval of the Minutes of the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of National City Regular Meeting on December 5, 2012.
   RECOMMENDATION: Approve the minutes as presented.
   ACTION: Motion by Aguirre, seconded by Perri to approve the minutes of the Oversight Board meeting held December 5, 2012. Motion carried by the following vote: Ayes Aguirre, Carson, Desrochers, Donaldson, Perri. Absent:, Hentschke, Morrison

2. **SUBJECT:** Open Public Comment session Pursuant to Health and Safety Code Section 34179.6(b) regarding the Non-housing Assets Due Diligence Review conducted Pursuant to Health and Safety Code Section 34179.5.
   RECOMMENDATION: Open Public Comment Session
   ACTION: Motion carried to open the Public Comment Session until the next regular scheduled meeting on December 19, 2012 by the following vote: Ayes Aguirre, Carson, Desrochers, Donaldson, Perri. Absent: Hentschke, Morrison

REPORTS: None

ADJOURNMENT

The special meeting was adjourned to the next Regular Adjourned Meeting of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency to be held on December 19, 2012 at 3:00 p.m., Council Chambers – National City Civic Center, California.

The meeting adjourned at 4:39 p.m.

_____
Clerk

_____
Secretary

The foregoing minutes were approved at the Special Meeting of December 19, 2012.

_____
Oversight Board Chairman

OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY AGENDA STATEMENT

MEETING DATE: December 19, 2012 **AGENDA ITEM NO.** 2

ITEM TITLE:

Close the Public comment session Pursuant to Health and Safety Code Section 34179.6(b) regarding the results of the Non-housing Assets Due Diligence Review conducted Pursuant to Health and Safety Code Section 34179.5 previously opened at the meeting convened on December 11, 2012.

PREPARED BY: Brad Raulston
PHONE: 336-4256

DEPARTMENT: Successor Agency

APPROVED BY:

EXPLANATION:

Please see attached public notice.

FINANCIAL STATEMENT:

APPROVED: _____ Finance

ACCOUNT NO.

APPROVED: _____ MIS

ENVIRONMENTAL REVIEW:

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

BOARD / COMMISSION RECOMMENDATION:

ATTACHMENTS:

1. Public Notice

Attachment "1"

NOTICE OF PUBLIC COMMENT SESSION

OVERSIGHT BOARD TO THE SUCCESSOR AGENCYTO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY

PLEASE TAKE NOTICE that pursuant to Health and Safety Code Section 34179.6(b), the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency will hold a public comment session on **Tuesday, December 11, 2012, at 4:30 pm, in the City Hall Council Chambers at the City of National City, 1243 National City Blvd, National City, CA 91950** on the due diligence review results of the assets of the Successor Agency's non-housing funds. Specifically, but without limitation, any interested members of the public may comment on the amount of cash and cash equivalents in the non-housing funds determined by the due diligence review to be available for allocation to affected taxing entities prior to the Oversight Board's review, approval and transmittal of the results to the Department of Finance and County Auditor-Controller, which must occur no less than five business days after this Public Comment Session and by January 15, 2013.

As required by Health and Safety Code Section 34179.5 the Successor Agency to the Community Development Commission as the National City Redevelopment Agency retained a licensed accountant to conduct a due diligence review of the Successor Agency's assets to determine the unobligated balances available for transfer to taxing entities. The due diligence review was to be performed in two phases, the first of which pertained to the Low and Moderate Income Housing Fund and has already been completed. The second phase covers all other assets (the "non-housing" assets) of the Successor Agency and is the subject of this comment session. The licensed accountant's due diligence review of the non-housing assets is complete and the purpose of this public comment session is to allow any interested persons to comment on or question the determinations in the due diligence review prior to the Oversight Board's review and approval of the due diligence review and the net balances available for allocation to affected taxing entities.

A copy of the due diligence review of the non-housing assets may be obtained on the City of National City's website at www.nationalcityca.gov or by calling 619-336-4250.

THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY AGENDA STATEMENT

MEETING DATE: December 19, 2012 **AGENDA ITEM NO.** 3

ITEM TITLE: Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment approving the Due Diligence Review of the Non-housing Assets, as required by the Health & Safety Code Section 34179.5, and authorizing retention of funds by the Successor Agency pursuant to Health & Safety Code Section 34179.6(c)

PREPARED BY: Brad Raulston, Executive Director **DEPARTMENT:** Successor Agency

PHONE: X4256

APPROVED BY:

EXPLANATION:

The Due Diligence Review (DDR) of the Non-housing Assets is required by the Health & Safety Code Section 34179.5, and authorizing retention of funds by the Successor Agency pursuant to Health & Safety Code Section 34179.6(c). The DDR shows that there is no residual balance in the Non-housing Assets account; therefore, no remittance to the taxing entities is necessary.

FINANCIAL STATEMENT: **APPROVED:** _____ Finance

ACCOUNT NO. **APPROVED:** _____ MIS

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Adopt resolution

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

1. Draft Resolution
2. Independent Accountants Report

RESOLUTION NO. 2012 - 21

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY APPROVING THE DUE DILIGENCE REVIEW OF NON-HOUSING FUNDS, AS REQUIRED BY HEALTH AND SAFETY CODE SECTION 34179.5 AND AUTHORIZING RETENTION OF FUNDS BY THE SUCCESSOR AGENCY PURSUANT TO HEALTH & SAFETY CODE SECTION 34179.6(c)

WHEREAS, the Oversight Board ("Oversight Board") to the Successor Agency ("Successor Agency") to the Community Development Commission as the National City Redevelopment Agency has been established to take certain actions as required by the Health and Safety Code with respect to winding down the affairs of the National City Redevelopment Agency; and

WHEREAS, Health and Safety Code section 34179.5 mandates that every Successor Agency employ a licensed accountant to complete a "due diligence review" ("Due Diligence Review") of non-housing funds to determine the un-obligated balances available for transfer to taxing entities and that the results of that Due Diligence Review be submitted to the California Department of Finance ("DOF") and other specified entities; and

WHEREAS, Health and Safety code section 34179.6 requires that the Oversight Board approve and transmit the result of the aforementioned Due Diligence Review to the DOF and other specified entities; and

WHEREAS, Health and Safety Code section 34179.6 further requires that the Oversight Board convene a "public comment session" at least five business days before the Oversight Board holds an approval vote on the Due Diligence Review; and

WHEREAS, the Successor Agency retained a licensed accountant, Mayer Hoffman McCann, P.C. (which was approved by the San Diego County Auditor and Controller); the licensed accountant conducted and completed the Due Diligence Review; and the results were subsequently transmitted to the DOF and the required entities by the Successor Agency; and

WHEREAS, the Oversight Board convened a duly noticed "public comment session" regarding the Due Diligence Review in accordance with Health and Safety Code section 34179.6 on November 11, 2012, at which time the public was afforded the opportunity to provide comment to the Oversight Board; the public comment session was closed with no comment being offered either orally or in writing on November 19, 2012; and

WHEREAS, the Successor Agency reserves its right to amend the Due Diligence Review as may be necessary to capture all the obligations the Successor Agency may

have in the performance of its duties, subject to any obligation of the Oversight Board to approve such amendments; and

WHEREAS, pursuant to the requirements of Health and Safety Code section 34179.6, the Successor Agency has submitted the attached Due Diligence Review (Exhibit 1) for consideration and approval by the Oversight Board; and

WHEREAS, the Due Diligence Review includes expenditure and revenue accounting information as required by Health and Safety Code section 34179.5(c)(4) and determines that the total amount of assets, excluding those of the Low and Moderate Income Housing Fund, held by the successor agency as of June 30, 2012 to be $56,576,901 and such information is included in Exhibit B to the Due Diligence Review; and

WHEREAS, the Due Diligence Review calculated the amount of current balances that are legally restricted as to purposes and cannot be provided to taxing entities as required by Health and Safety Code section 34179.5(c)(5)(B) to be $39,655,687 and such information is included in Exhibit E to the Due Diligence Review; and

WHEREAS, the Due Diligence Review calculated the amount of assets held by the Successor Agency that are not cash or cash equivalents as required by Health and Safety Code section 34179.5(c)(5)(C) to be $11,967,524 and such information is included in Exhibit C to the Due Diligence Review; and

WHEREAS, the Due Diligence Review calculated the amount of cash balances as of June 30, 2012 necessary for retention in order to meet enforceable obligations for the current fiscal year (2012-2013) as required by Health and Safety Code section 34179.5(c)(5)(E) to be $4,330,581 and such information is included in Exhibit D to the Due Diligence Review; and

WHEREAS, the Due Diligence Review calculates the balance available for allocation to affected taxing entities as required by Health and Safety Code section 34179.5(c)(5) to be a negative $3,649,724 based on the above identified balances and obligations and, pursuant to Procedure 10 of the List of Procedures for Due Diligence Review published by the California Department of Finance, the payment of $4,272,833 to the County Auditor and Controller on July 12, 2012 as directed by Health and Safety Code section 34183.5(b)(2)(A) and such information is included in Exhibit A to the Due Diligence Review; and

WHEREAS, based on the negative balance of $3,649,724 calculated in Exhibit A to the Due Diligence Review, it may be concluded pursuant to Health and Safety Code section 34179.6(c) that no cash or cash equivalents are available for disbursement to affected taxing entities; and

WHEREAS, Health and Safety Code Section 34179.6(c) empowers the Oversight Board (subject to DOF approval) to authorize the Successor Agency to retain current balances identified in 34176.9(c)(5) subdivisions (B), (C) and (E) provided that the Oversight Board identifies the amount, source and purpose of the funds being retained; and

WHEREAS, the amount of assets that the Oversight Board authorizes the Successor Agency to retain totals $56,576,901 as identified on Exhibits A and B of the Due Diligence Review; and

WHEREAS, the sources of $51,623,211 the $56,567,901 are identified on are identified on Exhibits C and E to the Due Diligence Review; and

WHEREAS, the purpose of the assets totaling $11,957,524 on Exhibit C of the Due Diligence Review includes land held for resale, loans receivable and value of capital assets; and

WHEREAS, the purpose of the assets totaling $39,655,687 on Exhibit E of the Due Diligence Review is to pay for various community improvement and housing projects and to maintain required debt service reserves; and

WHEREAS, the remainder of the $56,567,901 in assets is cash or cash equivalents in the amount of $4,953,690, the source of which is property tax distributions or other general purpose revenues of the Successor Agency and the purpose for which is to:(a) permit the Successor Agency to meet its enforceable obligations as summarized on Exhibit D to the Due Diligence Review and as further detailed with specificity in the ROPS, which retained balances are needed even if the items rejected by the DOF on ROPS 3 are not included as obligations of the Successor Agency and (b) make the payment to the Auditor and Controller on July 12, 2012 as directed by Health and Safety Code section 34183.5(b)(2)(A);

NOW, THEREFORE, THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPEMENT AGENCY RESOLVES AS FOLLOWS:

Section 1. The foregoing Recitals are incorporated into this Resolution by this reference.

Section 2. Pursuant to Health and Safety Code section 34179.6, the Oversight Board hereby approves Due Diligence Review attached hereto as Exhibit 1 and fully incorporated by this reference, except as has specifically been modified or rejected by the Oversight Board. The Due Diligence Review is that "due diligence review" referred to Health and Safety Code sections 34179.5 and 34179.6 performed for non-housing

funds and shall be interpreted and applied in all respects in accordance with such sections and the California Redevelopment Law ("CRL"), to the fullest extent permitted by law; however, the Due Diligence Review shall only be applicable to and binding on the Successor Agency to the extent that AB X1 26 (and as amended by AB 1484) is applicable to the Successor Agency.

Section 3. The Executive Director and the Finance Director of the Successor Agency (and their designees) are hereby authorized and directed to evaluate and execute necessary changes to the Due Diligence Review (including changes to formatting as may be required by DOF) as may be appropriate and/or as required by AB X1 26 and/or AB 1484 whether pursuant to its terms, by court order, or as otherwise required by law.

Section 4. The Executive Director of the Successor Agency is further authorized and directed to notify and forward to the County Auditor and Controller, Department of Finance, the State Controller's Office, and any other entity required by law to obtain a copy of this Resolution and the Due Diligence Review as may be required by AB 26 and/or AB 1484.

Section 5. Pursuant to Health and Safety Code Section 34179.6(c), the Oversight Board authorizes the retention of assets totaling $56,576,901 as identified on Exhibits A and B of the Due Diligence Review. The sources and purposes of these funds and assets are described in the recitals above.

Section 6. The Oversight Board, in furtherance of its fiduciary duties to the taxing entities and the holders of enforceable obligations, hereby finds that the retention of the funds identified for the purposes described in Section 5 of this Resolution is in the best interest of the taxing entities and the holders of the enforceable obligations listed in the ROPS because retaining the identified funds to satisfy these obligations is necessary to satisfy enforceable obligations of the Successor Agency. Further, the Oversight Board finds that retaining these funds, in the long run, is in the interest of the taxing entities because absent these funds being retained, the obligations in the ROPS may be unable to be met, potentially exposing the Successor Agency to protracted dispute with holders of enforceable obligations, with the potential to result in more costly delay in winding down the operations of the Successor Agency.

Section 7. The Oversight Board has also determined (to the extent it is required to do so) that approval of the Due Diligence Report is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because the Due Diligence Review is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

Section 8. This Resolution shall take effect upon the date of adoption.

Section 9. The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

The foregoing resolution was duly and regularly adopted at a regular meeting of the Oversight Board for the Successor Agency to Redevelopment Agency for the City of National City held on the 19th day of December, 2012, by the following vote:

Ayes:
Noes:
Absent:
Abstain:

_____
Ron Morrison
Oversight Board Chair

ATTEST:

_____
Brad Raulston, Executive Director
Secretary to the Oversight Board

Approved as to form:

_____
Michael R.W. Houston
Cummins & White, LLP
Oversight Board Counsel

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INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

We have performed the procedures enumerated below, which were agreed to by the Successor Agency to the Redevelopment Agency of the City of National City (Successor Agency), the California Department of Finance, the California State Controller's Office, and the County Auditor-Controller's Office, solely to assist you in complying with the requirement for a due diligence review of the non-housing funds of the former Redevelopment Agency and the Successor Agency pursuant to Section 34179.5(c) of the California Health and Safety Code. Management of the Successor Agency is responsible for the Successor Agency's compliance with the California Health and Safety Code. This engagement to apply agreed-upon procedures was performed in accordance with the attestation standards established by the *American Institute of Public Accountants* for such engagements. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representations regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. We were not engaged to, and did not; perform an examination, the objective of which would be the expression of an opinion on the specified items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

Our procedures and results were as follows:

1. We obtained from the Successor Agency a listing of all assets (at their recorded book values) that were transferred from the former redevelopment agency to the Successor Agency on February 1, 2012. We agreed the amounts on this listing to account balances established in the accounting records of the Successor Agency.

   Results: On February 1, 2012, $50,342,887 of redevelopment fund net assets were transferred to the Successor Agency. This amount is presented in the "Total Transfers" line on EXHIBIT B in the Non-Housing column for the Successor Agency: 5 months ended June 30, 2012. The individual assets and liabilities are presented in the same column at their June 30, 2012 balances. We agreed the listing to account balances established in the accounting records of the Successor Agency.

2. If the State Controller's Office has completed its review of transfers required under both Sections 34167.5 and 34178.8 and issued its report regarding such review, attach a copy of that report as an exhibit to the AUP report. If this has not yet occurred, perform the following procedures:

   a. We obtained a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the former redevelopment agency to the city, county, or city and county that formed the redevelopment agency for the period from January 1, 2011 through January 31, 2012.

Results: The State Controller's Office has not completed the review of transfers. There were no transfers made to the city or county for the period from January 1, 2011 through January 31, 2012.

b. We obtained a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the Successor Agency to the city, county, or city and county that formed the redevelopment agency for the period from February 1, 2012 through June 30, 2012.

Results: There were no transfers made to the city or county for the period from February 1, 2012 through June 30, 2012.

c. For each transfer, we obtained the legal document that formed the basis for the enforceable obligation that required any transfer.

Results: This step is not applicable.

3. If the State Controller's Office has completed its review of transfers required under both Sections 34167.5 and 34178.8 and issued its report regarding such review, attach a copy of that report as an exhibit to the AUP report. If this has not yet occurred, perform the following procedures:

a. We obtained a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the former redevelopment agency to any other public agency or to private parties for the period from January 1, 2011 through January 31, 2012.

Results: There were no transfers for the period from January 1, 2011 through January 31, 2012 to any other public agency or private party.

b. We obtained a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the Successor Agency to any other public agency or private parties for the period from February 1, 2012 through June 30, 2012.

Results: There were no transfers for the period from February 1, 2012 through June 30, 2012 to any other public agency or private party.

c. For each transfer, we obtained the legal document that formed the basis for the enforceable obligation that required any transfer.

Results: This step is not applicable.

4. We obtained from the Successor Agency a summary of the financial transactions of the Redevelopment Agency and the Successor Agency in the format set forth in the California State Controller's Office's procedures for the fiscal year ended June 30, 2010, the fiscal year ended June 30, 2011, the period July 1, 2011 through January 31, 2012, and the period February 1, 2012 through June 30, 2012. For each period presented, we determined that the total of revenues, expenditures, and transfers accounted fully for the changes in equity from the previous fiscal period. We compared amounts in the schedule relevant to the fiscal year ending June 30, 2010 to the state controller's report filed for the Redevelopment Agency for that period.

Results: The schedule is presented at EXHIBIT B. This June 30, 2010 State Controller's Report and the Community Development Commission audited financial statements for the fiscal year ended June 30, 2011 included other Community Development Commission funds that were not Redevelopment Agency funds such as CDBG, Section 8, HOME, and other funds. These non-Redevelopment Agency funds have been excluded from EXHIBIT B.

5. We obtained from the Successor Agency a listing of all assets of the Redevelopment Agency Funds (excluding the Low and Moderate Income Housing Fund) as of June 30, 2012. We also agreed the assets listed to recorded balances reflected in the accounting records of the Successor Agency.

   Results: The listing of assets is included in EXHIBIT B. We agreed the assets listed to the accounting records to the Successor Agency without exception.

6. Obtain from the Successor Agency a listing of asset balances held on June 30, 2012 that are restricted for specific purposes and performed the following procedures:

   a. Unspent bond proceeds:

      i. We obtained the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures, amounts set aside for debt service payments, etc.).

      ii. Trace individual components of this computation to related account balances in the accounting records, or to other supporting documentation (specify in the AUP report a description of such documentation).

      iii. Obtain from the Successor Agency a copy of the legal document that sets forth the restriction pertaining to these balances.

      Results: See EXHIBIT E. We agreed the amounts to the accounting records and investment statements. We reviewed the legal documents that set forth the restrictions and verified that the associated bonds are on the approved ROPS.

   b. Grant proceeds and program income that are restricted by third parties:

      i. We obtained the Successor Agency's computation of the restricted balances.

      ii. We traced individual components of this computation to related account balances in the accounting records, or to other supporting documentation.

      iii. We obtained from the Successor Agency a copy of the grant agreement that sets forth the restriction pertaining to these balances.

      Results: There are no grant proceeds or program income.

   c. Other assets considered to be legally restricted:

      i. We obtained the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures).

ii. We traced individual components of this computation to related account balances in the accounting records, or to other supporting documentation.

iii. We obtained from the Successor Agency a copy of the legal document that sets forth the restriction pertaining to these balances.

Results: There are no other assets considered to be legally restricted.

d. We attached the above mentioned Successor Agency prepared schedule(s) as an exhibit to the AUP report. For each restriction identified on these schedules, we indicated in the report the period of time for which the restrictions are in effect.

Results: See EXHIBIT E.

7. We obtained from the Successor Agency a listing of assets as of June 30, 2012 that are not liquid or otherwise available for distribution (such as capital assets, land held for resale, long-term receivables, etc.) and ascertained if the values are listed at either purchase cost (based on book value reflected in the accounting records of the Successor Agency) or market value as recently estimated by the Successor Agency.

a. If the assets listed at 7(a) were listed at purchase cost, we traced the amounts to a previously audited financial statement (or to the accounting records of the Successor Agency) and noted any differences.

b. For any differences noted in 7(b), we inspected evidence of disposal of the asset and ascertained that the proceeds were deposited into the Successor Agency trust fund.

c. If the assets listed at 7(a) were listed at recently estimated market value, we inspected the evidence (if any) supporting the value and noted the methodology used.

Results: See EXHIBIT C. All amounts are reported at purchase cost. For capital assets, we traced the amounts to previously audited financial statements and current year accumulated depreciation additions. For loans receivable, we traced amounts to previously audited financial statements and current year repayments. For land held for resale, we traced amounts to previously audited financial statements.

8. We performed the following procedures:

a. For assets balance needed to be retained to satisfy enforceable obligations, we obtained from the Successor Agency an itemized schedule of asset balances (resources) as of June 30, 2012 that are dedicated or restricted for the funding of enforceable obligations and performed the following procedures:

i. We compared all information on the schedule to the legal documents that form the basis for the dedication or restriction of the resource balance in question.

ii. We compared all current balances to the amounts reported in the accounting records of the Successor Agency or to an alternative computation.

iii. We compared the specified enforceable obligations to those that were included in the final Recognized Obligation Payment Schedule approved by the California Department of Finance.

iv. We attached as an exhibit to the report the listing obtained from the Successor Agency. We also identified in the report any listed balances for which the Successor Agency was unable to provide appropriate restricting language in the legal document associated with the enforceable obligation.

Results: There are no other assets that are legally or contractually dedicated or restricted for the funding of an enforceable obligation.

b. For future revenues together with balances dedicated or restricted to an enforceable obligation are insufficient to fund future obligation payments and thus retention of current balances is required, we obtained from the Successor Agency a schedule of approved enforceable obligations that included a projection of the annual spending requirements to satisfy each obligation and a projection of the annual revenues available to fund those requirements and performed the following procedures:

i. We compared the enforceable obligations to those that were approved by the California Department of Finance.

ii. We compared the forecasted annual spending requirements to the legal document supporting each enforceable obligation by obtaining from the Successor Agency its assumptions relating to the forecasted annual spending requirements and disclose in the report major assumptions associated with the projections.

iii. For the forecasted annual revenues, we obtained the assumptions for the forecasted annual revenues and disclosed the major assumptions associated with the projections.

Results: This procedures is not applicable.

c. For projected property tax revenues and other general purpose revenues that were received by the Successor Agency are insufficient to pay bond debt service payments, we obtained from the Successor Agency a schedule demonstrating this insufficiency and applied the following procedures to the information reflected in that schedule:

i. We compared the timing and amounts of bond debt service payments to the related bond debt service schedules in the bond agreement.

ii. We obtained the assumptions for the forecasted property tax revenues and disclose major assumptions associated with the projections.

iii. We obtained the assumptions for the forecasted other general purpose revenues and disclose major assumptions associated with the projections.

Results: This procedure is not applicable.

d. If procedures, A, B, or C were performed, we calculated the amount of current unrestricted balances necessary for retention in order to meet the enforceable obligations by performing the following procedures:

i. We combined the amount of identified current dedicated or restricted balances and the amount of forecasted annual revenues to arrive at the amount of total resources available to fund enforceable obligations.

ii. We reduced the amount of total resources available by the amount forecasted for the annual spending requirements.

Results: This procedure is not applicable.

9. For cash balances as of June 30, 2012 that need to be retained to satisfy obligations on the Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2012 through June 30, 2013, we obtained a copy of the final ROPS for the period of July 1, 2012 through December 31, 2012 and a copy of the final ROPS for the period January 1, 2013 through June 30, 2013.

   Results: EXHIBIT D summarizes the net enforceable obligations over/under available funding for ROPS 2 (July 1, 2012 to December 31, 2012) and ROPS 3 (January 1, 2013 to June 30, 2013). We compared the projected property tax and estimated admin fees and pass throughs for ROPS 3 to correspondence from the County of San Diego. We determined the reasonableness of revenue from interest and rents without exception. For the RORF Obligations, we reconciled the amounts presented to the applicable approved ROPS line item for ROPS 2 and ROPS 3. The schedule also includes the County of San Diego true-up payment made on July 12, 2012 in the amount of $4,272,833.

10. We have included a schedule detailing the computation of the Balance Available for Allocation to Affected Taxing Entities.

    Results: See EXHIBIT A. There is no balance available for distribution to the affected taxing entities.

11. We obtained a representation letter from management acknowledging their responsibility for the data provided to the practitioner and the data presented in the report or in any attachments to the report.

    Results: No exceptions noted as a result of this procedure.

This letter is intended solely for the information and use of the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of National City, the Successor Agency to the Redevelopment Agency of the City of National City, the California Department of Finance, the California State Controller's Office, and the County of San Diego's Auditor-Controller's Office and is not intended to be and should not be used by anyone other than those specified parties.

Mayer Hoffman McCann P.C.

Irvine, California
December 10, 2012

EXHIBIT A

SUCCESSOR AGENCY TO THE NATIONAL CITY REDEVELOPMENT AGENCY
Summary of Balances Available for Allocation of Affected Taxing Entities
June 30, 2012

SUMMARY OF BALANCES AVAILABLE FOR ALLOCATION TO AFFECTED TAXING ENTITIES

Total amount of assets held by the successor agency as of June 30, 2012 (excluding Low and Moderate Income Housing Funds)	$ 56,576,901	EXHIBIT B
Less assets legally restricted for uses specified by debt covenants, grant restrictions, or restrictions imposed by other governments.	(39,655,687)	EXHIBIT E
Less assets that are not cash or cash equivalents (i.e. physical assets)	(11,967,524)	EXHIBIT C
Less balances that are dedicated or restricted for the funding of an enforceable obligation (net of projected annual revenues available to fund those obligations)	-	
Less balances needed to satisfy ROPS for the 2012-13 fiscal year (procedure 9)	(4,330,581)	EXHIBIT D
Less balances needed to satisfy ROPS for future fiscal years	-	
Less the amount of payments made on July 12, 2012 to the County Auditor-Controller as directed by the California Department of Finance	(4,272,833)	
Amount to be remitted to county for disbursement to taxing entities	**$ (3,649,724)**	

EXHIBIT B

SUCCESSOR AGENCY TO THE NATIONAL CITY REDEVELOPMENT AGENCY

Summary of Financial Transactions
6/30/2012

	Redevelopment Agency 12 Months Ended 6/30/2010	Redevelopment Agency 12 Months Ended 6/30/2011	Redevelopment Agency 7 Months Ended 1/31/2012	Successor Agency: 5 Months Ended 6/30/2012		
				Low and Moderate Income Housing	Non-Housing	Total
Assets:						
Cash and investments	$ 15,645,135	53,880,624	-	8,413,601	44,605,326	53,018,927
Accounts receivable	2,628,926	106,961	-	-	76,993	76,993
Property tax receivable	198,766	194,122	-	-	8,167	8,167
Accrued interest receivable	21,530	11,386	-	4,605	1,255	5,860
Loans receivable	13,056,241	8,591,801	-	-	737,026	737,026
Due from other funds	18,680	-	-	-	-	-
Due from other governments	-	2,796	-	-	2,796	2,796
Land held for resale	9,392,509	9,392,509	-	-	9,032,509	9,032,509
Capital assets	-	-	-	-	2,112,829	2,112,829
Total Assets	40,961,787	72,180,199	-	8,418,206	56,576,901	64,995,107
Liabilities:						
Accounts payable	2,367,076	1,317,582	-	528,038	66,854	594,892
Other liabilities	7,976,871	56,167	-	-	40,313	40,313
Deposits payable	-	87,500	-	-	25,000	25,000
Due to other governments	-	-	-	-	4,272,833	4,272,833
Advances from other funds	-	739,966	-	-	411,216	411,216
Deferred revenue	-	1,621,072	-	-	-	-
Long-Term liabilities	-	-	-	-	71,115,000	71,115,000
Total Liabilities	10,343,947	3,822,287	-	528,038	75,931,216	76,459,254
Equity	30,617,840	68,357,912	-	7,890,168	(19,354,315)	(11,464,147)
Total Liabilities + Equity	$ 40,961,787	72,180,199	-	8,418,206	56,576,901	64,995,107
Total Revenues:	$ 14,909,191	54,002,728	7,765,733	17,666	339,082	356,748
Total Expenditures/Expenses:	16,879,096	13,642,661	10,439,941	985,095	1,034,113	2,019,208
Total Transfers:	393,028	(811,158)	(65,683,704) B	8,857,597	50,342,887	59,200,484 B
Net change in equity	(1,576,877)	39,548,909	(68,357,912)	7,890,168	49,647,856	57,538,024
Beginning Equity:	32,194,717	30,617,840	68,357,912	-	-	-
Equity Adjustment		(1,808,837) A	-	-	(69,002,171) C	(69,002,171)
Ending Equity:	$ 30,617,840	$ 68,357,912	$ -	$ 7,890,168	$(19,354,315)	$ (11,464,147)

A *Adjustments made after the State Controller's Report was prepared.*

B *Transfers out are the extraordinary gains/losses recorded to transfer assets and liabilities to the successor agency. The net transfer of $6,483,220 is the transfer to the Housing Fund.*

C *Adjustments to record Successor Agency on the full accrual basis of accounting (capital assets and long-term liabilities).*

EXHIBIT C

SUCCESSOR AGENCY TO THE NATIONAL CITY REDEVELOPMENT AGENCY
Not Liquid Assets
6/30/2012

Asset	Cost at 6/30/2012
Capital assets, net of accumulated depreciation	$ 2,112,829
Loans receivable	737,026
Land held for resale	9,032,509
Total Not Liquid Assets	$ 11,967,524

SUCCESSOR AGENCY TO THE NATIONAL CITY REDEVELOPMENT AGENCY

SA RORF Funding Sources and Obligations (Cash Flows)

(Excludes the LMIHF, expenditures of bond proceeds and cash restricted for debt service reserves) (1)

Amounts for ROPS 2 are actuals or estimated actuals. Amounts for ROPS 3 conform to DOF letter dated October 7, 2012.

	ROPS Line Item	ROPS 2 July - Dec 2012 1-Jun-12	ROPS 3 Jan - June 2013 2-Jan-13	Total FY 2012-13
SA RORF Funding Sources:				
Projected Property Tax from RPTTF (2)		-	6,160,399	6,160,399
Less: Est Admin Fees and pass-throughs (2)		-	(809,858)	(809,858)
Net Projected RPTTF distribution		-	5,350,541	5,350,541
Less: Adjustment to match ROPS 3 approved RPTTF			(776,299)	(776,299)
Add: Revenue from interest and rents		50,000	50,000	100,000
Total Available Funding		**50,000**	**4,624,242**	**4,674,242**
Less: Obligations and payments (actual or estimated actual):				
RORF Obligations:				
Various non-housing capital projects	Various	-	(50,000)	(50,000)
Bond debt service	1-4	(5,772,472)	(1,940,070)	(7,712,542)
Loan Agreement with JPFA (police facility)	89	(320,000)		(320,000)
Admin Cost	Various	(133,257)	(133,257)	(266,514)
Legal services	Various	(200,000)	(263,100)	(463,100)
CDC Property Maintenance	Various	(34,310)	(34,110)	(68,420)
Other Professional Services	Various	(53,799)	(70,448)	(124,247)
Total RORF Obligations		**(6,513,838)**	**(2,490,985)**	**(9,004,823)**
Net of RORF Obligations (over)/under available funding at end of each period		**(6,463,838)**	**2,133,257**	**(4,330,581)**

Notes:

1. The LMIHF was subject to a separate analysis. Bond proceeds and debt service reserves held by the trustee banks cannot be used to meet cash flow needs or other obligations of the SA and are therefore excluded from this analysis.

2. Property tax, admin fees and pass through payments for ROPS 3 are based on estimates provided by the County of San Diego on Oct. 1, 2012. ROPS 2 payments were collected prior to June 30, 2012 and are included in the cash balances reported on EXHIBITS A and B.

EXHIBIT E

SUCCESSSOR AGENCY TO THE NATIONAL CITY REDEVELOPMENT AGENCY
SCHEDULE OF UNSPENT BOND PROCEEDS
JUNE 30, 2012

Bond Description	Unspent Bond Proceeds	On Approved ROPS	Maturity Date	
2011 Tax Allocation Bonds - fiscal agent	$ 4,243,078	Yes	2032	
2011 Tax Allocation Bonds *	32,698,647	Yes	2032	
1999 Tax Allocation Bonds - fiscal agent	333,294	Yes	2019	
2004 Tax Allocation Bonds - fiscal agent	35,626	Yes	2015/2033	A
2005 Tax Allocation Bonds Series A & B - fiscal agent	2,345,042	Yes	2033	
	$ 39,655,687			

Legal document restricting assets:
2011 Tax Allocation Bonds - bond indenture dated March 1, 2011
1999 Tax Allocation Bonds - bond indenture dated June 1, 1999.
2004 Tax Allocation Bonds - bond indenture dated June 1, 2004.
2005 Tax Allocation Bonds - bond indenture dated January 1, 2005.

A *The bonds consist of $3,045,000 in serial bonds which mature from 2005-2015 and $1,085,000 in serial bonds which matures from 2027-2033.*

* *These unspent bond proceeds were drawn down from the fiscal agent in 2011 and held by the successor agency in a segregated cash account.*

OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY AGENDA STATEMENT

MEETING DATE: December 19, 2012 **AGENDA ITEM NO.** 4

ITEM TITLE:
Resolution of the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency authorizing the Successor Agency to accept of grant deeds, execute documents including a Settlement Agreement, and perform actions in settlement of litigation.

PREPARED BY: Brad Raulston, Executive Director **DEPARTMENT:** Successor Agency

PHONE: Ext. 4256 **APPROVED BY:**

EXPLANATION:

Please see attached staff report.

FINANCIAL STATEMENT: **APPROVED:** _____ Finance

ACCOUNT NO. **APPROVED:** _____ MIS

N/A

ENVIRONMENTAL REVIEW:

N/A

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Adopt proposed resolution.

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

1. Successor Agency Staff Report
2. Settlement Agreement
3. Proposed resolution

Staff Report

BACKGROUND

On July 19, 2005, the former Community Development Commission of the City of National City ("CDC"), the Parking Authority, and ARE Holdings, LLC ("ARE"), entered into a Disposition and Development Agreement ("DDA") in furtherance of the redevelopment of certain real property located between 11th and 12th Street in National City, bordering National City Boulevard on the east and Roosevelt Avenue on the west for a residential and retail mixed-use project. The DDA included provisions in which ARE was to acquire certain properties for development and if they were unable to, then the CDC would acquire them. Accordingly, the CDC, pursuant to the DDA, sought acquisition of certain properties. ARE was financially obligated under the DDA to pay for the CDC's acquisition costs, which amounted to approximately $140,000. ARE failed to reimburse the CDC for its acquisition costs, and eventually, the CDC abandoned the acquisitions. ARE did not develop the project and did not complete its obligations under the DDA. ARE, however, did demand the CDC purchase certain properties it had acquired as part of the development project. The CDC did not purchase those properties.

THE LAWSUIT

On October 15, 2010, ARE filed a lawsuit against the CDC and the Parking Authority in the Superior Court of the State of California, identified as Case No. 37-2010-00102387-CU-BC-CTL, arising out of obligations and covenants under the DDA. ARE alleged the CDC and Parking Authority had breached the DDA by failing to purchase the three properties ARE had acquired for their development project. ARE alleged the CDC and Parking Authority were obligated to purchase any properties acquired by ARE, at ARE's purchase price, upon ARE's demand.

On February 14, 2011, the CDC and the Parking Authority filed a cross-complaint against ARE, and named as additional cross-defendants related entities Parking Company and PCAM, LLC, under the theory of "alter ego" arising out of obligations and covenants under the DDA. The cross-complaint alleged ARE breached the DDA, owed the CDC money, and was obligated to pay for the attorneys' fees and costs incurred in prosecuting this action (approximately $100,000). While ARE alleges it purchased the properties under the DDA, ARE did not actually acquire the properties. Instead, PCAM purchased the properties. PCAM had no contractual relationship with the CDC or the Parking Authority.

The CDC and Parking Authority maintained that ARE's lawsuit lacked merit. The Court agreed. On February 17, 2012, the Court sustained the CDC's and Parking Authority's demurrer to the First Amended Complaint of ARE without leave to amend. ARE no longer had a case against the CDC or the Parking Authority. The CDC's and Parking Authority's cross-complaint, however, remained. Trial is currently set to commence January 11, 2013.

THE SETTLEMENT

The Parties engaged in mediation in effort to resolve the outstanding issues. Of the three properties PCAM acquired for ARE, one has an outstanding mortgage balance (likely higher than the estimated value of the property) and the other two do not. In effort to resolve the cross-complaint, the CDC would accept the transfer of two properties without mortgages in satisfaction of the amount due by ARE to the CDC. One parcel is vacant land, and the other parcel has a structure on it which is boarded up. The two properties are roughly estimated to amount to a value of $122,500. Accordingly, the two properties would be deeded to the CDC which is the entity that paid for the acquisition costs. The descriptions of the two properties are specified in the attached settlement agreement.

RECOMMENDATION

Staff recommends authorizing the Chairman to execute the settlement agreement, accept the grant deeds, and the perform actions necessary in settlement of this litigation.

Under the terms of the Settlement Agreement, the Successor Agency will execute and accept title to each of the parcels being conveyed to the Successor Agency, and authorize the Chairman, or his designee, to perform such acts to and execute such other documents as are necessary to settle the litigation and to acquire title insurance concerning the parcels being acquired, in accordance with title company procedures and policies.

These actions would require Oversight Board approval and DOF approval before they are final. The settlement agreement contains these contingencies. This item is on the Oversight Board agenda for December 19, 2012.

SETTLEMENT AGREEMENT, RELEASE AND WAIVER

THIS SETTLEMENT AGREEMENT, RELEASE AND WAIVER ("Settlement Agreement") is made this 13th day of December 2012, by the Successor Agency to the Community Development Commission as the National City Redevelopment Agency, a separate and distinct entity from the City of National City (the "Successor Agency"), Parking Authority of the City of National City (the "Parking Authority"), ARE Holdings, LLC ("ARE"), Parking Company of America Management, LLC d/b/a Parking Company of America ("Parking Company"), and PCAM, LLC ("PCAM"). The Successor Agency, Parking Authority, ARE, Parking Company and PCAM may be collectively referred to herein as the "Parties."

RECITALS

A. On July 19, 2005, Community Development Commission of the City of National City ("CDC"), Parking Authority, and ARE entered into a Disposition and Development Agreement ("Development Agreement") in furtherance of the redevelopment of certain real property located between 11th and 12th Street of National City, bordering National City Boulevard on the East and Roosevelt Ave on the West for a residential and retail mixed-use project.

B. On October 15, 2010, ARE filed a lawsuit against CDC and Parking Authority in the Superior Court of the State of California, for the County of San Diego, identified as Case No. 37-2010-00102387-CU-BC-CTL, arising out of obligations and covenants under Development Agreement. On February 14, 2011, the CDC and Parking Authority filed a cross-complaint against ARE and named as additional cross-defendants related entities Parking Company and PCAM under the theory of "alter ego" arising out of obligations and covenants under the Development Agreement. On February 17, 2012, the Court sustained CDC and Parking Authority's demurrer to the first amended complaint of ARE without leave to amend. The above-referenced action herein is referred to as the "Litigation."

C. Unrelated to the Litigation, pursuant to Assembly Bill X1 26 (Chapter 5, Statutes 2011, First Extraordinary Session), as modified by the Supreme Court in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies were dissolved by February 1, 2012, and all assets, properties, contracts, leases, records, buildings and equipment of the former redevelopment agency were transferred to the control of the Successor Agency. On January 10, 2012, City Council of the City of National City adopted Resolution No. 2012-15, pursuant to Part 1.8 of the Health and Safety Code, electing for the City to serve as the Successor Agency to the Community Development Commission (the Redevelopment Agency) upon its dissolution under Assembly Bill X1 26.

D. Without admitting any liability or fault, each of the Parties to this Settlement Agreement now desire to resolve all aspects of the Litigation among themselves and to terminate

the Development Agreement but only upon the full and timely performance of the following terms and conditions in the manner prescribed herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and for good and valuable consideration the parties hereby agree as follows:

1. Settlement.

(a) ARE, Parking Company, and PCAM, hereby acknowledge and agree that this Settlement Agreement is subject to approval by the, Successor Agency, the Oversight Board of the City of National City ("Oversight Board"), and review and approval of the State of California Department of Finance ("Department of Finance"). In the event the Successor Agency, the Oversight Board, and/or of the Department of Finance, or any of them, do not approve this Settlement Agreement, then the Settlement Agreement shall become null and void.

(b) ARE, Parking Company, and PCAM agree to and shall convey to the Successor Agency two parcels acquired by PCAM under the Development Agreement, free and clear of any monetary encumbrances and taxes, except those taxes not yet due and payable, located at: (1) 38 West 11th Street, National City, CA; and (2) a vacant lot identified as Parcel No. 555-114-04-00. The parcels are more fully described on the attached Exhibit "A" (hereinafter "Subject Properties").

(i) Transfer of Subject Properties. PCAM will promptly, on or before December 21, 2012, execute and deliver to the Offices of Christensen & Spath at 550 West C Street, Suite 1660, San Diego, California 92101, properly executed Grant Deeds for subsequent delivery by Christensen & Spath LLP to Stewart Title of California ("Stewart Title"), in a form and content of which is substantially the same as those grant deeds attached hereto as Exhibit "B", subject to approval of the Successor Agency and as approved by Stewart Title sufficient to provide the Successor Agency a CLTA Owners Policy of Title Insurance to the Subject Properties, conveying title to the Subject Properties to the Successor Agency, free and clear of any and all encumbrances, except for taxes not yet due and payable. The cost of the policy of CLTA Owners Title Insurance shall be shared between the Parties with 1/2 of the cost paid for by the Successor Agency and 1/2 of the cost paid for by ARE, PCAM, and/or Parking Company. The Grant Deeds shall NOT be recorded unless and until the Settlement Agreement has been approved by the Successor Agency and the Oversight Board. If the Settlement is approved, then the Grant Deeds shall be recorded on or before December 31st, 2012.

(ii) Recordation of Grant Deeds. Upon approval from the Successor Agency and the Oversight Board of the Settlement Agreement, and receipt of executed Grant Deeds from PCAM in form and content described in Section 1(b)(i) above, Successor Agency shall

direct Stewart Title to record the Grant Deeds conveying the Subject Properties to the Successor Agency.

(iii) Condition of Properties. Successor Agency acknowledges that it is sophisticated and knowledgeable with regard to evaluating, buying, and selling real property in Southern California, and that it had sufficient opportunity to enter upon the Subject Properties and make any and all tests and inspections as Successor Agency deems necessary to satisfy itself as to the condition of the Subject Properties. PCAM shall convey the Subject Properties to Successor Agency "as is" in their present condition, without any representations or warranties of any nature or kind whatsoever from PCAM regarding the Properties or any improvements existing thereon.

(iv) Later Government Approvals. If, after the transfer and recordation of the grant deeds contemplated in this Settlement Agreement, the Department of Finance does not approve this Settlement Agreement, the Parties agree that the Successor Agency shall within 30 days of final action of such disapproval convey the Subject Properties back to PCAM, and shall execute and record such documents as are necessary to cause Stewart Title to insure title in PCAM free and clear of encumbrances, except for taxes not yet due and payable. The parties shall share the cost of recording such documents and the costs of CLTA title insurance. In such instance, this Settlement Agreement shall become null and void per Paragraph 1.a, above.

(c) PCAM shall retain title to a third parcel located at 1115 Roosevelt Ave, National City, CA acquired under the Development Agreement free and clear of any claims from the Successor Agency and Parking Authority in connection with Development Agreement.

(d) Waiver of Fees and Costs. Effective only upon the acquisition of insured title to the Subject Properties vested in the Successor Agency and provided that the Department of Finance does not thereafter disapprove of the Settlement Agreement, and upon the satisfaction of the terms and conditions herein, the Parties agree to waive any and all right to attorneys' fees and costs arising out of this Litigation.

(e) Dismissal of the Litigation. Upon the acquisition of insured title to the Subject Properties vested in the Successor Agency, and upon the satisfaction of the terms and conditions herein, including approval by the Successor Agency, Oversight Board, and Department of Finance, the Parties shall file with the court a request that its Litigation be dismissed with prejudice, with a waiver of costs and fees by all parties. Further, upon execution of this settlement agreement by ARE, Parking Company and PCAM, the Successor Agency shall cause the Litigation to be placed upon the Settlement/Dismissal calendar.

(f) Termination of Development Agreement. Effective only upon the acquisition of insured title to the Subject Properties vested in the Successor Agency and provided that the Department of Finance does not thereafter disapprove of the Settlement Agreement, and upon the satisfaction of the terms and conditions herein, the Successor Agency, Parking Authority, and

ARE agree the Development Agreement shall be terminated and each party shall be released from all obligations under the Development Agreement.

2. Release of Claims.

(a) Scope of Releases. The Parties and each of them, by and for itself hereby acknowledges and agrees that the scope of the mutual release and discharge of claims recited in Sections 2(b) and (c) below shall be interpreted to the broadest extent permissible under law. The Parties agree that this Section 2 shall be effective only if and when insured title to the Subject Properties is vested in the Successor Agency and provided that the Department of Finance does not thereafter disapprove of the Settlement Agreement. Effective upon insured title to the Subject Properties being vested in the Successor Agency and provided that the Department of Finance does not thereafter disapprove of the Settlement Agreement, the Parties shall mutually release one another from all obligations and liabilities with respect to the matters referenced within the Litigation.

(b) Mutual Release and Discharge of Claims. Effective only upon the acquisition of insured title to the Subject Properties being vested in the Successor Agency and provided that the Department of Finance does not thereafter disapprove of the settlement, and except for the obligations of the Parties under the terms of this Settlement Agreement, the Parties separately by and for itself, each freely and without coercion, fully and forever releases, acquits and discharges each other party hereto and their attorneys, sureties, agents, servants, representatives, employees, members, Council Members, officers, trustees, subsidiaries, affiliates, partners, predecessors, successors-in-interest, heirs, executors and assigns, and all persons acting by, through, under or in concert with them, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, damages, costs, attorney's fees, losses of service, expenses, liabilities, suits, and compensation of any kind or nature whatsoever, whether based on tort, contract, or other theory of recovery, claimed by any of them which arise from or relate to facts or events occurring on or before the date of this Settlement Agreement with respect to the Litigation only.

The Parties expressly acknowledge and agree that this release shall extend to any and all claims, whether judicial, administrative or otherwise, including, without limitation, claims made with any court, commission, tribunal, board or administrative body with jurisdiction to consider such claims related to the Litigation. This release expressly extends to and bars any and all complaints, actions and/or proceedings, whether judicial or administrative, actually instituted by the Parties, or which could be instituted by any of the Parties, with respect to the Litigation. Nothing in this Settlement Agreement shall be construed to mean that any of the Parties is or are waiving any rights to enforce this Settlement Agreement.

(c) Waiver of California Civil Code Section 1542.

(i) Effective only upon the acquisition of insured title to the Subject Properties being vested in the Successor Agency and provided that the Department of Finance does not thereafter disapprove of the Settlement Agreement, the release and discharge specified in Section 2(b), above, shall be effective to bar all claims, damages, claims for disability benefits, personal injuries, claims for compensation, controversies, actions, causes of action, obligations, liabilities, costs, expenses, attorneys' fees and damages of any character, nature and kind, whether known or unknown, suspected or unsuspected. In furtherance of this intention, the Parties and each of them expressly waives and relinquishes any and all rights and benefits conferred on them by the provisions of Section 1542 of the California Civil Code.

(ii) The Parties understand that California Civil Code Section 1542 provides as follows:

> **A general release does not extend to claims which a creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

(iii) It is expressly understood and agreed by the Parties that the possibility of unknown claims exists and has been explicitly taken into account in determining the consideration to be given for this Settlement Agreement and that a portion of the consideration, having been bargained for with full knowledge of the possibility of such unknown claims, was given in exchange for the release and discharge of the matters, claims and/or rights covered by this Settlement Agreement.

(iv) The Parties agree that if either or any of them hereafter commences, joins in, or in any manner seeks relief through any suit arising out of, based upon, or relating to any of the settled claims released hereunder, then he/she/it shall pay to the other parties, in addition to any other damages caused to the other parties thereby, all attorneys' fees incurred by the other parties in defending or otherwise responding to said suit of settled claims.

(v) This release shall not operate to release any claims the Parties may later have for the enforcement of the obligations created by this Settlement Agreement.

3. Representations and Warranties.

(a) Representation of Comprehension. By entering into this Settlement Agreement, each party represents to the other that (i) each of them fully understands and accepts the terms of this Settlement Agreement; (ii) each of them has relied upon the legal advice of their attorneys or that they have freely and independently chosen not seek the advice of an attorney; (iii) each of them has had a full and ample opportunity to consult with any other professionals of their choice in connection with the rights and liabilities created by this Settlement Agreement; (iv) none of them has any questions with regard to the legal import of any term, word, phrase, or portion of

this Settlement Agreement, or this Settlement Agreement in its entirety; and (v) each of them accepts the terms of this Settlement Agreement as written.

(b) Representation of Approvals.

(i) By the Successor Agency and Parking Authority. Except for the pending approval of Settlement Agreement by the Successor Agency, Oversight Board, and Department of Finance, by entering into this Settlement Agreement, the Successor Agency and Parking Authority and the persons signing below on behalf of the Successor Agency and Parking Authority, each represents to ARE, Parking Company, and PCAM that: (1) the persons signing below on behalf of the Successor Agency and Parking Authority are authorized to execute this Settlement Agreement on behalf of the Successor Agency and Parking Authority; and (2) this Settlement Agreement is binding on the Successor Agency and Parking Authority.

(ii) By ARE, PCAM, and Parking Company. By entering into this Settlement Agreement, ARE, PCAM, and Parking Company, and the persons signing below on behalf of each entity, each represents to the Successor Agency and Parking authority that: (1) this Settlement Agreement has been duly approved by all necessary board or member actions and no further or additional approvals are needed; (2) the person(s) signing below on behalf of each entity is authorized to execute this Settlement Agreement on behalf of each entity; and (3) this Settlement Agreement is binding on each entity.

4. Compromise. This Settlement Agreement is the result of a compromise and shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any party hereto, nor shall the payment of any sum of money in consideration for the execution of this Settlement Agreement constitute or be construed as an admission of any liability whatsoever by any of the parties hereto.

5. General Provisions.

(a) Attorneys' Fees. The Parties hereto acknowledge and agree that each of them shall bear their own costs, expenses and attorneys' fees arising out of this Settlement Agreement and the Litigation, including without limitation, the negotiation, drafting, and execution of this Settlement Agreement, and all matters connected therewith. In the event any action or proceeding is brought to enforce this Settlement Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs against the non-prevailing parties, in addition to all other relief to which that party or those parties may be entitled. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

(b) Construction of Settlement Agreement. This Settlement Agreement is the product of negotiation and preparation by and among each party hereto and their respective attorneys. Accordingly, all Parties hereto acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and this Settlement Agreement shall be construed accordingly.

(c) Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parents, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, plaintiffs, defendants and/or persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

(d) Severability. If any provision or any part of any provision of this Settlement Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Settlement Agreement shall not be affected thereby and shall remain in full force and effect.

(e) Entire Agreement. This Settlement Agreement contains the entire understanding among the Parties to this Settlement Agreement with regard to the Lawsuit, Appeal and/or the Subject Property, and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the terms and conditions of this Settlement Agreement that are not fully expressed herein.

(f) Incorporation of Recitals. The Recitals to this Settlement Agreement are hereby incorporated into this Settlement Agreement by this reference.

(g) Facsimile Signatures. Facsimile or electronically transmitted copies of signatures shall be acceptable and treated as original signatures.

(h) Counterparts. This Settlement Agreement may be executed in counterparts and each executed counterpart shall be as effective as the original.

(i) Further Assurances. All Parties agree to cooperate fully and execute any and all supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

(j) Time of the Essence. Time is of the essence for the full execution of this Settlement Agreement and implementation of each and every provision hereof.

(k) Signatories' Representations and Warranties. Each signatory to this Settlement Agreement on behalf of any party does hereby personally represent and warrant that he or she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each party whom such individual represents or purports to represent.

(l) Waiver of Right to Collaterally Attack or Set Aside Settlement Agreement. The Parties hereby waive all rights of appeal, motions for new trial, motions for judgments notwithstanding the verdict, motions to set aside a judgment of dismissal, if any, and any and all

other direct and/or collateral attacks on this Settlement Agreement. This Settlement Agreement is and shall be a full adjudication, settlement and resolution of all claims and defenses in the Litigation as of the date of this Settlement Agreement; and, except for the covenants expressly provided in this Settlement Agreement, this Settlement Agreement discharges and discharge all claims and defenses presented by the Litigation. This Agreement shall bind successors, heirs and assigns of all of the Parties.

(m) Covenant Not to Sue. The Parties covenant and agree never to commence, aid, or in any way or in any manner prosecute against each other any legal action or proceeding based upon the matters released and settled in this Settlement Agreement and/or to commence any legal action or proceeding based upon any other claim, demand, cause of action, obligations, damage or liability arising out of or related to the matters settled, released and compromised in this Settlement Agreement. This covenant does not extend to any legal action or proceeding brought for the purpose of enforcing this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed as of the date first written above.

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

SUCCESSOR AGENCY:
Successor Agency to the Community Development Commission as the National City Redevelopment Agency

By:_____
Print Name:_____
Its:_____

PARKING AUTHORITY:
Parking Authority of the City of National City

By:_____
Print Name:_____
Its:_____

ARE:
ARE Holdings, LLC,

By:_____
Print Name:_____
Its:_____

Parking Company:
Parking Company of America Management, LLC d/b/a Parking Company of America

By:_____
Print Name:_____
Its:_____

PCAM:
PCAM, LLC

By:_____
Print Name:_____
Its:_____

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

Approved as to Form and Content

Olivarez Madruga, P.C.

Dated: December __, 2012 By: _____

Terence Gallagher, Esq.
Attorneys for Plaintiff and Cross-Defendants, ARE Holdings, LLC, Parking Company of America Management, LLC d/b/a Parking Company of America, and PCAM, LLC

CHRISTENSEN & SPATH LLP

Dated: December __, 2012 By: _____

Charles B. Christensen, Esq.
Jose A. Garcia, Esq.
Attorneys for Defendant and Cross-Complainant, City of National City, as successor agency to Community Development Commission of the City of National City, and Parking Authority of the City of National City

EXHIBIT "A"

VACANT LOT

Lot 6, Block 12, National City, in the City of National City, County of San Diego, State of California, according to Map thereof No. 348, filed in the office of the County recorder of San Diego County October 2, 1882.

APN: 555-114-04-00

38 WEST 11TH STREET, NATIONAL CITY, CALIFORNIA

Lots 1 and 2 in Block 12 of National City, in the City of National City, County of san Diego, State of California, according to Map thereof No. 348, filed in the office of the recorder of San Diego County October 2, 1882.

APN: 555-114-01-00

RESOLUTION NO. 2012 – 22

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY AUTHORIZING THE SUCCESSOR AGENCY TO ACCEPT GRANT DEEDS, EXECUTE DOCUMENTS INCLUDING A SETTLEMENT AGREEMENT, AND PERFORM ACTIONS IN SETTLEMENT OF LITIGATION

WHEREAS, on July 19, 2005, the Community Development Commission of the City of National City ("CDC"), the Parking Authority, and ARE Holdings, LLC ("ARE"), entered into a Disposition and Development Agreement ("DDA") in furtherance of the redevelopment of certain real property located between 11th and 12th Street in National City, bordering National City Boulevard on the east and Roosevelt Avenue on the west for a residential and retail mixed-use project; and

WHEREAS, on October 15, 2010, ARE filed a lawsuit against the CDC and the Parking Authority in the Superior Court of the State of California, identified as Case No. 37-2010-00102387-CU-BC-CTL, arising out of obligations and covenants under the DDA; and

WHEREAS, on February 14, 2011, the CDC and the Parking Authority filed a cross-complaint against ARE, and named as additional cross-defendants related entities Parking Company and PCAM, LLC, under the theory of "alter ego" arising out of obligations and covenants under the DDA; and

WHEREAS, on February 17, 2012, the Court sustained the CDC's and Parking Authority's demurrer to the First Amended Complaint of ARE without leave to amend. The above-referenced action herein is referred to as the "Litigation."

WHEREAS, unrelated to the Litigation, pursuant to Assembly Bill X1 26 (Chapter 5, Statutes 2011, First Extraordinary Session), as modified by the Supreme Court in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, all redevelopment agencies were dissolved by February 1, 2012, and all assets, properties, contracts, leases, records, buildings, and equipment of the former redevelopment agency were transferred to the control of the Successor Agency; and

WHEREAS, on January 10, 2012, the City Council adopted Resolution No. 2012-15, pursuant to Part 1.8 of the Health and Safety Code, electing the City to serve as the Successor Agency to the Community Development Commission as the National City Redevelopment Agency upon dissolution of the Community Development Commission of the City of National City under Assembly Bill X1 26; and

WHEREAS, without admitting any liability or fault, each of the parties to the Litigation desire to enter a Settlement Agreement (attached hereto as Exhibit A) to resolve all aspects of the Litigation among themselves and to terminate the DDA; and

WHEREAS, under the terms of the Settlement Agreement, the Successor Agency shall execute and accept title to each of the parcels being conveyed to the Successor Agency, and authorize the Chairman, or his designee, to perform such acts to and execute such other documents as are necessary to settle the litigation and to acquire title insurance concerning the parcels being acquired, in accordance with title company procedures and policies.

WHEREAS, the Successor Agency approved the Settlement Agreement at a meeting held on November 18, 2012 by adoption of Successor Agency Resolution No. 2012-___; and

WHEREAS, pursuant to Health and Safety Code section 34171(d)(1) sub-divisions (D) and (F), settlements of litigation are considered enforceable obligations of the Successor Agency.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency to the Community Development Commission as the National City Redevelopment Agency hereby approves the Settlement Agreement; and

BE IT FURTHER RESOLVED that the Oversight Board authorizes the Chairman of the Successor Agency to execute and accept title to each of the parcels being conveyed to the Successor Agency; and

BE IT FURTHER RESOLVED that the Chairman of the Successor Agency, or his designee, are hereby authorized to perform such acts to and execute such other documents as are necessary to settle the litigation and to acquire title insurance concerning the parcels being acquired, in accordance with title company procedures and policies; and

BE IT FURTHER RESOLVED that the obligations of the Successor Agency contained in the Settlement Agreement shall, if and when required by law, be included in the Successor Agency's future Recognized Obligations Payment Schedules. If desired by the Successor Agency, the Successor Agency is hereby authorized, without further need for Oversight Board approval, to amend the Third ROPS to include the Settlement Agreement.

BE IT FURTHER RESOLVED that The Oversight Board, in furtherance of its fiduciary duties to the taxing entities and the holders of enforceable obligations, hereby finds that the Settlement Agreement is in the best interest of the taxing entities and the holders of the enforceable obligations because the Settlement Agreement assists in the efficient winding down of the affairs of the Successor Agency. Continued protracted litigation creates uncertainty and may result in increased costs and delay; and

BE IT FURTHER RESOLVED that The Oversight Board has also determined (to the extent it is required to do so) that approval of the Settlement Agreement is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because the Settlement Agreement is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines; and

BE IT FURTHER RESOLVED that notice of this Resolution shall be transmitted to the Department of Finance by electronic means and shall take effect at the time provided in Health and Safety Code Section 34179(h).

BE IT FURTHER RESOLVED that The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

--- Signature page to follow ---

The foregoing resolution was duly and regularly adopted at a regular meeting of the Oversight Board for the Successor Agency to Redevelopment Agency for the City of National City held on the 19th day of December, 2012, by the following vote:

Ayes:
Noes:
Absent:

Abstain:

_____
Ron Morrison, Chairman

ATTEST:

_____
Brad Raulston, Executive Director
Secretary to the Oversight Board

APPROVED AS TO FORM:

_____
Michael R.W. Houston
Cummins & White, LLP
Oversight Board Counsel