

SUCCESSOR AGENCY RESOLUTION NO. 14-13

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE RICHMOND COMMUNITY REDEVELOPMENT AGENCY BOARD AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO DESIGN AND FUNDING AGREEMENT AND SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT AND SUCCESSOR AGENCY TO THE RICHMOND COMMUNITY REDEVELOPMENT AGENCY

WHEREAS, the City Council of the City of Richmond (the "City Council") adopted the Amended and Restated Redevelopment Plan for the Merged Project Area, adopted by Ordinance No. 17-10 N.S., dated May 4, 2010 (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan sets forth a plan for redevelopment of the Merged Project Area (the "Project Area"); and

WHEREAS, the Richmond Community Redevelopment Agency (the "former Agency") was responsible for administering the Redevelopment Plan to cause the redevelopment of the Project Area, including installation of public improvements consistent with the Redevelopment Plan; and

WHEREAS, the former Agency, Bay Area Rapid Transit District ("BART") and Richmond Transit, LLC ("Original Developer") entered into a Disposition and Development Agreement dated April 11, 2002 ("Original DDA"), later amended by the Assignment and Assumption Agreement among former Agency, BART, Original Developer and Olson 737 – Richmond 132, LLC ("Developer") in which Developer assumed Original Developer's interests and obligations under the Original DDA, dated as of May 9, 2003 and further amended by the Second Amendment to the Disposition and Development Agreement on August 1, 2008 (as amended, the "DDA"), which DDA sets forth the rights and obligations of the parties thereto regarding the development of a mixed-use transit village ("Transit Village") by Developer on certain real property described in the DDA as the "Site"; and

WHEREAS, the DDA divided the development of the Transit Village into two phases. Phase I (as defined in the DDA) includes the construction of an approximately 700-space parking structure (the "Parking Structure"). The Parking Structure was turned over to BART on August 26, 2014. Phase II includes the elevation of Nevin Avenue to grade, the installation of an elevator and the construction of a stairway (the "Phase II Improvements"); and

WHEREAS, the Parking Structure and Phase II Improvements are to be constructed by the former Agency at the former Agency's expense as provided in the DDA; and

WHEREAS, Section 302.7 of the DDA requires that the former Agency reimburse BART for any costs incurred in connection with the Parking Structure and Phase II Improvements, including design review and construction inspection; and

WHEREAS, on July 29, 2008 the former Agency Board approved the Design and Funding agreement and Second Amendment to the Disposition and Development Agreement (the "Design and Funding Agreement"), which provided for the payment of up to \$1,585,634 in BART costs associated with the Parking Structure; and

WHEREAS, as part of the 2011-12 State budget bill, the California Legislature enacted, and the Governor signed, companion bills AB 1X 26 and AB 1X 27, requiring that each redevelopment agency be dissolved unless the community that created it enacts an ordinance committing it to make certain payments; and

WHEREAS, a Petition for Writ of Mandate was filed in the Supreme Court of the State of California on July 18, 2011 (*California Redevelopment Association v. Ana Matosantos, et al.*, Case No. S194861), challenging the constitutionality of AB 1X 26 and AB 1X 27 on behalf of cities, counties and redevelopment agencies and requesting a stay of enforcement; and

WHEREAS, on December 29, 2011 the Supreme Court issued its final decision in the aforesaid litigation, upholding AB 1X 26, invalidating AB 1X 27 and extending all statutory deadlines under AB 1X 26, essentially dissolving all redevelopment agencies throughout the State effective February 1, 2012; and

WHEREAS, AB 1X 26 provides that successor agencies be designated as successor entities to the former redevelopment agencies, and provides that, with certain exceptions, all authorities, rights, powers, duties and obligations previously vested with the former redevelopment agencies, under the California Redevelopment Law, are vested in the successor agencies; and

WHEREAS, in accordance with Health and Safety Code (“HSC”) Section 34173, the Successor Agency to the Richmond Community Redevelopment Agency (“Successor Agency”) was created on January 24, 2012; and

WHEREAS, the obligation to construct the Parking Structure and the Phase II Improvements is included in the approved Recognized Obligation Payment Schedule for the period July 2014 to December 2014 (“ROPS 14-15A”) as line item No. 55, approved by the Oversight Board of the Successor Agency at its meeting of February 25, 2014, and in compliance with HSC 34177 (l); and

WHEREAS, the California State Department of Finance, by its letter of April 11, 2014, approved ROPS 14-15A, including line item No. 55; and

WHEREAS, HSC 34177 (a) requires that the Successor Agency make payments on debts and enforceable obligations listed on approved ROPS 14-15A; and

WHEREAS, BART has estimated that an additional \$199,366 (the “Additional Funds”) is required in order to reimburse BART for staff costs incurred during construction of the Parking Structure, maintenance costs expected to be incurred in connection with fire sprinklers installed in the Parking Structure, and BART staff costs associated with design and construction of the Phase II Improvements (the “Additional Costs”); and

WHEREAS, Successor Agency and BART desire to amend the Design and Funding Agreement to provide the Additional Funds to BART for the Additional Costs; and

WHEREAS, by the agenda report accompanying this Resolution (“Agenda Report”) the Successor Agency Board has been provided with additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that the Successor Agency Board finds the above recitals are true and correct and have served, together with the Agenda Report, as the basis for the findings and actions set forth in this Resolution.

BE IT FURTHER RESOLVED that the Successor Agency Board hereby approves Amendment No. 1 to Design and Funding Agreement between the San Francisco Bay Area Rapid Transit District and Successor Agency to the Richmond Community Redevelopment Agency to provide the Additional Funds to BART for the Additional Costs.

BE IT FURTHER RESOLVED that the Successor Agency Board hereby authorizes the City Manager to execute Amendment No. 1 to Design and Funding Agreement, and to execute further amendments to the Design and Funding Agreement as may be necessary to complete the Phase II Improvements.

BE IT FURTHER RESOLVED that the Successor Agency designates the City Clerk as the custodian of the documents and other materials which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the City Clerk at the Richmond City Hall, 450 Civic Center Plaza, Richmond, California 94804.

I certify that the foregoing resolution was passed and adopted by the Successor Agency to the Richmond Community Redevelopment Agency Board at a regular meeting held on November 18, 2014, by the following vote:

AYES: Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
Clerk of the Successor Agency

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Successor Agency Board Chair

Approved as to form:

BRUCE GOODMILLER
Successor Agency Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 14-13**, finally passed and adopted by the Successor Agency to the Richmond Community Redevelopment Agency Board at a regular meeting held on November 18, 2014.