

CITY COUNCIL RESOLUTION NO. 92-13

SUCCESSOR AGENCY RESOLUTION NO. 13-11

A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND AND THE MEMBERS OF THE SUCCESSOR AGENCY TO THE RICHMOND COMMUNITY REDEVELOPMENT AGENCY BOARD AUTHORIZING EXECUTION OF THE EIGHTH AMENDMENT TO THE CONSTRUCTION AGREEMENT WITH C. OVERAA AND COMPANY FOR THE TRANSIT VILLAGE PARKING STRUCTURE

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. The Phase I Improvements (as defined in the DDA) include the construction of a parking structure containing approximately 750 parking spaces and retail space (the "Parking Structure"); and

WHEREAS, the Parking Structure is to be constructed by the former Agency at the former Agency's expense as provided in the DDA. Upon completion of construction, the Parking Structure will be conveyed to BART as provided in the DDA; 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 is included in the approved Recognized Obligation Payment Schedule for the period January 2013 to June 2013 (“ROPS III”) as line items No. 50 and 55, approved by the Oversight Board of the Successor Agency at its meeting of September 26, 2012, and in compliance with HSC 34177 (l); and

WHEREAS, the California State Department of Finance, by its letter of November 11, 2012, approved ROPS III, including line items No. 50 and 55; and

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

WHEREAS, on February 16, 2010 the former Agency Board and City Council awarded a contract for construction of the Parking Structure to C. Overaa and Company (“Overaa”); and

WHEREAS, during the course of construction, additional costs were incurred, which exhausted the contingency funds approved for the Parking Structure; and

WHEREAS, through negotiations with Overaa, Overaa has agreed that all outstanding change orders may be settled in an amount not to exceed \$799,714.00; and

WHEREAS, the Successor Agency budgeted the necessary funds, including Federal, State and local grant funds that the Successor Agency was able to secure for the construction of the Parking Structure in the Fiscal Year 2012-2013 budget item “Metrowalk – Richmond Transit Village”; and

WHEREAS, by the agenda report accompanying this Joint Resolution (“Agenda Report”) the City Council and Successor Agency Board have 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 City Council and Successor Agency Board find 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 City Council and Successor Agency Board hereby approve the Eighth Amendment to the Construction Agreement with C. Overaa and Company to increase the as-amended authorized expenditures amount by \$799,714 for a total of \$25,685,094.

BE IT FURTHER RESOLVED that the City Council and Successor Agency Board hereby authorize the expenditure of up to \$799,714 as authorized in its approved FY 2012-2013 budget for the Parking Structure in budget item “Metrowalk – Richmond Transit Village”.

BE IT FURTHER RESOLVED that the City Council and Successor Agency Board hereby authorize the City Manager to execute the Eighth Amendment to the Construction Agreement with C. Overaa and Company.

BE IT FURTHER RESOLVED that the City Council and Successor Agency designate 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 Joint Resolution was passed and adopted by the City Council of the City of Richmond and the Successor Agency to the Richmond Community Redevelopment Agency Board at a meeting held on September 17, 2013, by the following vote:

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

NOES: None.

ABSTENTIONS: None.

ABSENT: Mayor McLaughlin.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

COURTLAND BOOZÉ
Vice Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

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

I certify that the foregoing is a true copy of **Resolution No. 92-13**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on September 17, 2013.