

OVERSIGHT BOARD RESOLUTION NUMBER OB-2015-5

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY APPROVING THE GRANT OF EASEMENT AND RELATED AGREEMENT RELATED TO THE BALLPARK VILLAGE PROJECT.

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26) enacted on June 28, 2011, the Former RDA dissolved as of February 1, 2012, at which time the City, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is required to administer the winding down of the Former RDA's operations and to ensure compliance with the Former RDA's obligations in accordance with AB 26, as subsequently amended (collectively, the Dissolution Laws); and

WHEREAS, the Dissolution Laws specify that the Oversight Board and the California Department of Finance (DOF) must review and approve certain actions and decisions of the Successor Agency; and

WHEREAS, in 2005, the Former RDA entered into an Owner Participation Agreement (OPA) with Ballpark Village, LLC (Developer) allowing for the development of a large parcel located generally east of Petco Park, commonly referred to as Parcel C, located in downtown San Diego (Site); and

WHEREAS, as of February 1, 2012, the Successor Agency has assumed the Former RDA's rights and obligations under the OPA by operation of AB 26; and

WHEREAS, the OPA, at paragraph 2 on page 13 of the Scope of Development (Attachment No. 4 to the OPA) obligates the Successor Agency to grant the Developer all necessary and appropriate easements for development of the Site; and

WHEREAS, in order to comply with the OPA, the Successor Agency will be required to grant a perpetual easement to Developer affecting a subterranean portion of the Successor Agency's property for construction, operation, maintenance and repair of an underground parking garage benefiting the development project on the Site pursuant to a Grant of Easement and Related Agreement (Agreement); and

WHEREAS, the OPA does not set forth the amount of monetary compensation for this perpetual easement, and the Agreement effectively amends the OPA by providing a fair market value appraisal as the mechanism for determining the compensation amount, consistent with California Health and Safety Code section 34181(f)(2); and

WHEREAS, the Agreement specifies that, as consideration for Successor Agency's grant of the easement, Developer shall pay to the Successor Agency a monetary amount equal to the fair market value of the easement area as determined by an appraisal from an independent MAI-approved appraiser; and

WHEREAS, Civic San Diego, on behalf of the Successor Agency, will enter into a services contract with the selected independent appraiser, with all appraisal costs borne by Developer; and

WHEREAS, HSC section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, granting the easement will ensure the Successor Agency's fulfillment of the enforceable obligation established by the OPA and the Successor Agency's compliance with HSC section 34177(c); and

WHEREAS, the DOF issued a letter dated April 1, 2014, interpreting the Dissolution Laws to mean the Oversight Board must find that any post-AB 26 contract amendment for the provision of services is in the best interests of the local taxing entities in accordance with HSC section 34181(e) or that the contract amendment, including any increase in compensation or scope of services, is necessary for the administration or operation of the Successor Agency in accordance with HSC section 34171(d)(1)(F); and

WHEREAS, while it is uncertain whether the DOF's letter dated April, 2014 applies in the present situation, this Resolution describes the basis for the Oversight Board to make the two findings identified in the DOF's letter; and

WHEREAS, the Agreement will benefit the local taxing entities and will be in their best interests, in that the Successor Agency's granting of the easement fulfills its enforceable obligation in accordance with the OPA and will ensure that the Successor Agency does not commit any breach or default under the OPA that could expose the Successor Agency to the payment of any damages or claims; and

WHEREAS, the Agreement will also benefit the local taxing entities and will be in their best interests because the easement allows for the development of a large mixed-use project containing residential, commercial, office and parking uses, and also provides for offsite and onsite affordable housing (Project), which will assist in the elimination of blight in downtown San Diego and can be reasonably expected to increase property tax revenues through the construction of valuable new improvements benefiting the local community; and

WHEREAS, the Agreement is necessary for the operation or administration of the Successor Agency because it will allow the Successor Agency to grant the easement necessary for the Project, thereby enabling the Successor Agency to fulfill its enforceable obligation in compliance with the OPA; NOW, THEREFORE,

BE IT RESOLVED by the Oversight Board as follows:

1. The Oversight Board finds, in accordance with HSC section 34181(e), that the Agreement is in the best interests of the local taxing entities.

2. The Oversight Board finds, in accordance with HSC section 34171(d)(1)(F), that the Agreement is necessary for the administration or operation of the Successor Agency.

3. The Agreement, a copy of which is included as Exhibit 2 to the Staff Report dated March 13, 2015 accompanying this Resolution, is approved subject to the following conditions to be approved in the final executed Agreement:

a. the easement area will not include any ramps at the street level for access to the underground parking structure; and

b. while this resolution approves the selection of an independent MAI-approved appraiser, the Oversight Board will not need to approve the valuation of the appraisal; and

c. Developer will pay the appraised fair market value of the easement as determined by the appraisal; and

d. Exhibit C to the Agreement will be modified to reflect the actual scope of the easement, which is a smaller area than currently depicted.

4. The Oversight Board approves the Successor Agency's retention of an independent MAI-approved appraiser, mutually selected by Successor Agency and Developer, in order to determine the fair market value of the easement payable by Developer to Successor Agency in accordance with the Agreement, with all appraisal costs borne by Developer.

PASSED AND ADOPTED by the Oversight Board at a duly noticed meeting of the Oversight Board held on March 16, 2015.

A handwritten signature in black ink, consisting of several overlapping, stylized loops and lines, positioned above a horizontal line.

Chair, Oversight Board