

RESOLUTION NO. SA-13-31

RESOLUTION OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY APPROVING AN EXTENSION OF VARIOUS DATES AND DEADLINES IN THE DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) WITH SUDBERRY-PALM AVENUE LLC BY LETTER AGREEMENT

WHEREAS, the City of Imperial Beach (the "City") entered into that certain Disposition and Development Agreement with Sudberry-Palm Avenue LLC, a California limited liability company (the "Developer") dated December 14, 2011 (the "DDA") for the development of (i) a privately owned "town center" of new construction combining retail with commercial space in a pedestrian-friendly environment, consisting of approximately 46,200 square feet of building area in seven (7) buildings (designated as Parcels A through G), surface parking consisting of approximately 238 parking stalls, landscaping, hardscaping, lighting, driveways, and related improvements (defined in the DDA as the "Private Improvements"), and (ii) certain off-site public improvements, including without limitation intersection improvements at Delaware Avenue, Palm Avenue and State Route 75 and all associated improvements, curb, gutter, landscaping, traffic signal, alley and undergrounding improvements required for the Project, and any other Cal-Trans requirements (defined in the DDA as the "Public Improvements"), (the Private Improvements and the Public Improvements are collectively defined as the "Project"); and

WHEREAS, the DDA was amended by that certain "Letter Agreement" entered into by the City and the Developer and dated March 15, 2012, and further amended by that certain "Memorandum of Agreement Regarding Ninth Street Improvements and Funding for Site Preparation Design Work" entered into by the City and the Developer and dated August 10, 2012, and further amended by that certain second "Letter Agreement" entered into by the City and the Developer and dated December 20, 2012 (the "Second Extension Letter Agreement"), all collectively referred to herein as the "DDA" and incorporated herein by this reference; and

WHEREAS, the DDA pertains to that certain real property constituting two (2) parcels formerly owned by the former Imperial Beach Redevelopment Agency (the "Former Agency") and conveyed to the City for development of the Project (Parcels A - Assessor Parcel Number: 626-250-03, and Parcel B - Assessor Parcel Number 626-250-04 Thru 06) and additional land vacated by the City comprising in total approximately 4.75 acres located generally at the south side of Palm Avenue (State Route 75), between 7th Street and 9th Street, Imperial Beach, California and (defined collectively in the DDA as the "Site");

WHEREAS, the DDA contemplates the disposition of the Site to the Developer for the development of the Project pursuant to the DDA; and

WHEREAS, the DDA further contemplates the City's retention and ownership of the Public Improvements to be constructed on and off the Site pursuant to the DDA; and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) ("AB 26" or the "Dissolution Act") was signed by the Governor of California on June 28, 2011, making certain changes to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (the "Redevelopment Law") and the California Health and Safety Code (the "Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding the Dissolution Act largely constitutional and reformed certain deadlines set forth in the Dissolution Act; and

WHEREAS, under the Dissolution Act and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Former Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies, including without limitation liquidating and disposing of real property owned by the former redevelopment agencies; and

WHEREAS, on January 5, 2012, the City Council (the "City Council") of the City adopted Resolution No. 2012-7136 accepting for the City the role of Successor Agency to the Former Agency (the "Successor Agency") pursuant to Part 1.85 of the Dissolution Act; and

WHEREAS, under the Dissolution Act, each Successor Agency shall have an oversight board with fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property taxes and other revenues pursuant to Health and Safety Code Section 34188; and

WHEREAS, the oversight board has been established for the Successor Agency (hereinafter referred to as the "Oversight Board") and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, on March 15, 2012, in order to implement the Project and provide the parties with additional time within which to perform certain obligations and to exercise certain rights under the DDA in light of the Dissolution Act, the City and Sudberry mutually agreed to extend certain dates and deadlines set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) by nine (9) months; and

WHEREAS, the Dissolution Act was amended when the Governor signed Assembly Bill No. 1484 ("AB 1484") on June 27, 2012 (reference hereinafter to the Dissolution Act means AB 26 as amended by AB 1484); and

WHEREAS, on August 15, 2012, the Successor Agency adopted Resolution No. SA-12-15 which approved, among other actions, (i) the terms of the DDA between the City and the Developer, (ii) the sale and conveyance of the Site to the Developer pursuant to the terms of the DDA for development of the Project; (iii) the City's retention and ownership of the Public Improvements constructed as part of the Project; and (iv) the City's transfer to the Successor Agency of the residual proceeds received from the sale of the Site to the Developer for the Successor Agency's use and distribution for approved development projects or to otherwise wind down the affairs of the Former Agency pursuant to Health and Safety Code Section 34177(e) of the Dissolution Act. In addition, the Successor Agency authorized and directed the Executive Director of the Successor Agency, or his or her designee, and the City Manager, or his designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. SA-12-15 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to such Resolution; and

WHEREAS, on August 15, 2012, the City Council adopted Resolution No. 2012-7243 which approved, subject to certain conditions, the City's transfer to the Successor Agency of the residual proceeds of the sale of the Site under the terms of the DDA. In addition, provided that all required conditions were satisfied, the City Council authorized and directed the Executive Director of the Successor Agency, or his designee, and the City Manager, or his designee, to take all actions and sign any and all documents necessary to implement and effectuate the DDA and the actions approved by Resolution No. 2012-7243 including, without limitation, approving extensions of deadlines set forth in the DDA and the Schedule of Performance as determined necessary by the City Manager, or his designee, under the DDA, approving amendments to the DDA and its Attachments as determined necessary by the City Manager, or his designee, to effectuate the DDA, executing documents on behalf of the Successor Agency and City (including, without limitation, grant deeds and quitclaim deeds), and administering the Successor Agency's and City's obligations, responsibilities and duties to be performed pursuant to such Resolution; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency submitted its approvals and actions taken pursuant to Resolution No. SA-12-15 to the Oversight Board to seek its approval of the terms of the DDA and other actions, and published prior notice of such Oversight Board actions in a newspaper at least ten (10) days prior to the Oversight Board's consideration of such actions. On September 12, 2012, the Oversight Board approved all of the same actions approved by the Successor Agency as described above, by its adoption of Resolution No. OB-12-10; and

WHEREAS, pursuant to the Dissolution Act, Successor Agency staff then submitted notice of the Oversight Board's adoption of Resolution No. OB-12-10, and approvals therein, to the State Department of Finance (DOF), in addition to submitting notice of such actions to the County of San Diego and other agencies; and

WHEREAS, Health and Safety Code Section 34179(h) of the Dissolution Act provides that the DOF may review such Oversight Board actions, and that such Oversight Board actions shall become effective five (5) business days after notice to the DOF in the manner specified by the DOF is provided unless the DOF requests a review. The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period. Therefore, in accordance with Health and Safety Code Section 34179(h) of the Dissolution Act, the Oversight Board approvals set forth in Resolution No. OB-12-10 are considered effective; and

WHEREAS, additionally, in connection with the Oversight Board actions pertaining to the Site and asset dispositions, Health and Safety Code Section 34181(f) of the Dissolution Act provides in pertinent part that the Oversight Board actions shall be subject to review by the DOF pursuant to Health and Safety Code Section 34179 of the Dissolution Act except that the DOF may extend its review period from forty (40) days by up to sixty (60) days, and that if the DOF does not object to such actions, and if no action challenging such actions is commenced within sixty (60) days of the approval of the actions by the Oversight Board, then the actions of the Oversight Board shall be considered final and "can be relied upon as conclusive by any person." The DOF never requested review of the Oversight Board actions taken pursuant to Resolution No. OB-12-10 within the statutory review period and no action challenging such Oversight Board actions was commenced within 60 days of September 12, 2012, the date of the Oversight Board's approval of Resolution No. OB-12-10. Therefore, in accordance with Health and Safety Code Section 34181(f) of the Dissolution Act, the Oversight Board approvals set forth in Resolution No. OB-12-10 are considered final and can be relied on as conclusive by any person; and

WHEREAS, on December 5, 2012, the City Council and Successor Agency adopted Resolution Nos. 2012-7282 and SA-12-19, respectively, approving, among other actions, extensions of various dates and deadlines in the DDA for an additional nine (9) months. Also authorized by Resolution Nos. 2012-7282 and SA-12-19 was an Assignment and Assumption Agreement assigning all of the City's rights, interest and obligations under the DDA, including all Attachments and agreements entered into by the City pursuant to the DDA, and for the Successor Agency's acceptance of the assignment and assumption of all rights, interest and obligations, subject to the terms of the Assignment and Assumption Agreement. In addition, the proposed Assignment and Assumption Agreement released and relieved the City of the performance of all terms, covenants, and conditions on the part of the City to be performed under the DDA except for the financial obligations to provide up to \$2.2 Million to pay or reimburse Sudberry for the cost of the plans, permitting, construction and installation of the public improvements as part of the Project from the funds received by the City from the Former Agency pursuant to the Cooperation Agreement, as long as the City has possession of these funds; and

WHEREAS, on December 20, 2012, in order to implement the Project and provide the parties with additional time within which to perform certain obligations and to exercise certain rights under the DDA in light of the Dissolution Act, the City and Sudberry mutually agreed to extend certain dates and deadlines set forth in the DDA and the Schedule of Performance (Attachment No. 5 to the DDA) by an additional nine (9) months; and

WHEREAS, on December 27, 2012, the Assignment and Assumption Agreement was executed by the City and the Successor Agency. Also authorized by Resolution Nos. 2012-7282 and SA-12-19 adopted on December 5, 2013, was the transfer by the City to the Successor Agency of the Site. This transfer was completed by execution of a Quitclaim Deed on December 27, 2012, which was then recorded on January 17, 2013; and

WHEREAS, the DDA, including the Schedule of Performance ("SOP") (Attachment No. 5 to the DDA), contains various dates and deadlines for the performance of obligations and the exercise of rights by the City and the Developer, respectively, set forth in the DDA. Due to delays in implementation of the Project caused by issues relating to the Dissolution Act and proceedings pursuant thereto, staff is recommending that the Successor Agency authorize the Executive Director of the Successor Agency to execute a third Letter Agreement with the Developer that will further extend various dates and deadlines in the DDA, including certain dates and deadlines set forth in the SOP, as determined necessary by the Executive Director by an additional nine (9) months. Such extension will implement the Project and provide the parties with additional time within which to perform certain obligations and to exercise certain rights under the DDA in light of the Dissolution Act. The Developer has verbally agreed to such extensions and to executing the proposed third Letter Agreement; and

WHEREAS, the proposed extension of dates and deadlines in the DDA, including the SOP, is consistent with the approvals of the City Council, Successor Agency, and Oversight Board as set forth in Resolution No. 2012-7243, Resolution No. SA-12-15, and Resolution No. OB-12-10, respectively, for the purposes of implementing the Project and effectuating the DDA and the approvals set forth in these Resolutions. Thus, these actions have been previously authorized by these Resolutions and would be taken to further implement the Project and the DDA as approved by the City Council, Successor Agency and Oversight Board. These prior approvals of the Oversight Board were not reviewed or objected to by the DOF or challenged within the time periods provided by the Dissolution Act; and

WHEREAS, a Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City, as lead agency, approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

NOW, THEREFORE, BE IT RESOLVED by the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1:** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2:** The Successor Agency hereby approves the extension of various dates and deadlines set forth in the DDA, including certain dates and deadlines set forth in the Schedule of Performance ("SOP") (Attachment No. 5 to the DDA), as determined necessary by the Executive Director by an additional nine (9) months. Further, the Successor Agency authorizes the Executive Director, or his designee, to execute a Letter Agreement, in the form as approved by the Executive Director and the City Attorney, to extend such dates and deadlines as determined necessary by the Executive Director by an additional nine (9) months, in accordance with this Resolution.
- Section 3:** The Successor Agency hereby authorizes the Executive Director to take such other actions and execute such other documents as are necessary to effectuate the intent and terms of this Resolution.
- Section 4:** The adoption of this Resolution and actions approved and taken pursuant to this Resolution are not intended to waive, and shall not constitute a waiver, by the City and/or the Successor Agency of any constitutional, legal and/or equitable rights that the City and/or the Successor Agency may have under law and/or in equity, relating to the effectiveness of the DDA or previous actions taken with respect to the DDA, or to challenge, through administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26/AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26/AB 1484, and any and all related legal and factual issues, and the City expressly reserves any and all such rights, privileges, and defenses available under law and in equity.
- Section 5:** A Mitigated Negative Declaration (MND) was prepared for the Project, routed for public review and submitted to the State Clearinghouse (SCH #2011111018) for agency review pursuant to the provisions of the California Environmental Quality Act ("CEQA"). The City Council of the City, as lead agency, approved and certified the information contained in the Final MND for the Project on December 14, 2011, which included mitigation measures that will avoid or reduce all potentially significant environmental effects to below a level of significance. This activity has been determined to be adequately addressed in the Final MND for the Project, and there is no

substantial change in circumstances, new information of substantial importance, or project changes which would warrant additional environmental review; therefore, no further environmental review is required under the CEQA pursuant to State CEQA Guidelines Section 15162.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 18th day of September 2013, by the following vote:

AYES:	BOARD MEMBERS:	PATTON, BRAGG, JANNEY
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	SPRIGGS, BILBRAY


JAMES C. JANNEY
CHAIRPERSON

ATTEST:


JACQUELINE M. HALD, MMC
SECRETARY