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RESOLUTION NO. SBOB/2014-04

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO APPROVING A GRANT OF A REAL PROPERTY EASEMENT FROM THE SAN BERNARDINO ECONOMIC DEVELOPMENT CORPORATION TO THE SUCCESSOR AGENCY AND THEN FROM THE SUCCESSOR AGENCY TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT FOR PUBLIC USE PURPOSES PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE § 34181(a) WITH RESPECT TO A PORTION OF ASSESSOR'S PARCEL NUMBERS 0281-021-30, 0281-031-51, 0281-031-52 AND 0281-041-41, REQUESTING THE CALIFORNIA DEPARTMENT OF FINANCE TO APPROVE THE GRANTING OF SAID EASEMENT ON A STAND-ALONE APPROVAL BASIS AND APPROVING CERTAIN RELATED ACTIONS

WHEREAS, the Redevelopment Agency of the City of San Bernardino was dissolved February 1, 2012; and

WHEREAS, the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of San Bernardino ("Oversight Board") has been established pursuant to Health and Safety Code Section 34179 to assist in the wind-down of the dissolved redevelopment agency; and

WHEREAS, per Health and Safety Code § 34181(a), the Oversight Board may, among other things, direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset; and

WHEREAS, pursuant to Health and Safety Code § 34181, the San Bernardino County Flood Control District ("SBCFCD") has: i) requested a grant of a real property easement with respect to a portion of Assessor's Parcel Numbers 0281-021-30, 0281-031-51, 0281-031-52 and 0281-041-41 (the "Property") and ii) offered to assume any costs associated with the preparation and grant of the prescribed easement as compensation; and

WHEREAS, the Property is currently owned by the San Bernardino Economic Development Corporation ("SBEDC"); and

WHEREAS, most of the Property is situated on a bluff above and overlooking the Santa Ana River; and

WHEREAS, that portion of the Property to be included within the requested easement is situated below the bluff, is within a flood plain, is physically a portion of the Santa Ana River bed and/or embankment, is depicted on an exhibit attached to the staff report that accompanies this Resolution (the "Easement Area"), is commercially undevelopable and is of negligible value; and

WHEREAS, the Easement Area has on an implied basis historically been in actual and continuous use as a physical portion of the Santa Ana river bed and/or embankment for an indeterminate period of time; and

1 **WHEREAS**, the SBCFCD is responsible for certain flood control and water re-charge
2 activities within the County of San Bernardino which includes management of such matters with
3 respect to portions of the Santa Ana River watershed, inclusive of the Easement Area; and

4 **WHEREAS**, the SBCFCD will use the Easement Area for flood control and other public
5 use purposes, inclusive of a portion for the Santa Ana River Trail Project for which the County of
6 San Bernardino is a recipient of a grant from the California Parks Bond Act Program to develop;
7 and

8 **WHEREAS**, the Property is encumbered with a certain "Lease and Option to Purchase
9 Agreement" dated November 1, 1997 by and between the Community Development Commission of
10 the City of San Bernardino on behalf of the Redevelopment Agency of the City of San Bernardino,
11 as Lessor, and the ABC Rail Products Corporation, as Original Lessee; and

12 **WHEREAS**, during 2006, the Original Lessee was acquired by Meridian Rail Acquisition,
13 DBA, Greenbrier Rail Service which included the assumption of the Original Lessee's obligations
14 with respect to the Lease and Option to Purchase Agreement, which was acknowledged by the
15 Lessor; and

16 **WHEREAS**, the business operations of Meridian Rail Acquisition, DBA, Greenbrier Rail
17 Service do not include or affect in any way the Easement Area; and

18 **WHEREAS**, the Meridian Rail Acquisition, DBA, Greenbrier Rail Service has orally
19 confirmed their concurrence with the granting of a real property easement to the SBCFCD for the
20 Easement Area for the purposes stated herein and will formally confirm such at the time the
21 easement is to be granted in the form required for consummation and recordation of the easement;
22 and

23 **WHEREAS**, on December 28, 2012, the Oversight Board adopted Resolution No.
24 SBOB/2012-20, which authorized the Successor Agency to the Redevelopment Agency of the City
25 of San Bernardino ("Successor Agency") to, among other things, recover the Property from the
26 SBEDC and to grant a real property easement with respect to a portion of the Property to the
27 SBCFDC; and

28 **WHEREAS**, in its letter of April 3, 2013, the California Department of Finance authorized
the recovery of the Property from the SBEDC and the subsequent granting of the real property
easement to the SBCFCD (Exhibit "A"); and

WHEREAS, on September 30, 2013, the Oversight Board adopted Resolution No.
SBOB/2013-04, which among other things, authorized the acceptance by the Successor Agency of
the transfer of certain assets, inclusive of the Property, along with any outstanding related liabilities,
from the SBEDC in accordance with the State Controller's Office Asset Transfer Review dated as of
March 2013; and

WHEREAS, in its letter of November 12, 2013, the California Department of Finance for a
variety of reasons disallowed Oversight Board Resolution No. SBOB/2013-04; and

WHEREAS, pursuant to the foregoing, the Oversight Board requests that the California
Department of Finance authorize a grant of a real property easement with respect to that portion of

1 the Property that constitutes the Easement Area from the SBEDC to the Successor Agency and then
2 from the Successor Agency to the SBCFCD on a stand-alone approval basis; and

3 **WHEREAS**, subsequent to the Oversight Board's approval of this Resolution, it will be
4 submitted to the California Department of Finance for their review and consideration consistent with
5 the provisions prescribed therefor in the Health and Safety Code; and

6 **WHEREAS**, subsequent to the California Department of Finance review process, it will be
7 necessary for the SBEDC, the Successor Agency and the SBCFCD to take further appropriate
8 actions to consummate and record the requested easement; and

9 **WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have
10 been met.

11 **NOW, THEREFORE, BE IT RESOLVED** by the Oversight Board for the Successor
12 Agency to the Redevelopment Agency of the City of San Bernardino, as follows:

13 **Section 1.** The foregoing recitals are true and correct and are a substantive part of this
14 Resolution.

15 **Section 2.** Pursuant to Health and Safety Code § 34181(a) and consistent with the terms
16 specified within this Resolution, the ultimate granting of a real property easement
17 with respect to that portion of the Property that constitutes the Easement Area to the
18 SBCFCD is approved.

19 **Section 3.** That the California Department of Finance authorize the grant of the aforementioned
20 real property easement with respect that portion of the Property that constitutes the
21 Easement Area from the SBEDC to the Successor Agency and then from the
22 Successor Agency to the SBCFCD on a stand-alone approval basis.

23 **Section 4.** The City Manager, or designee, is hereby authorized to transmit this Resolution to
24 the California Department of Finance as prescribed by the Health and Safety Code.

25 **Section 5.** Subsequent to the completion of the California Department of Finance review
26 process, the SBEDC, Successor Agency and SBCFCD are authorized to take those
27 necessary and appropriate actions to consummate and record the requested easement.

28 **Section 6.** This Resolution shall take effect upon the date of its adoption, subject to the
conditions described herein.

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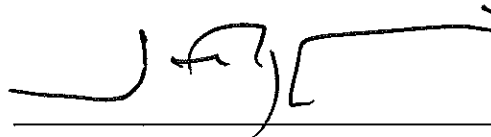
1 A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO
 2 THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO APPROVING
 3 A GRANT OF A REAL PROPERTY EASEMENT FROM THE SAN BERNARDINO
 4 ECONOMIC DEVELOPMENT CORPORATION TO THE SUCCESSOR AGENCY AND
 5 THEN FROM THE SUCCESSOR AGENCY TO THE SAN BERNARDINO COUNTY
 6 FLOOD CONTROL DISTRICT FOR PUBLIC USE PURPOSES PURSUANT TO
 7 CALIFORNIA HEALTH AND SAFETY CODE § 34181(A) WITH RESPECT TO A
 8 PORTION OF ASSESSOR'S PARCEL NUMBERS 0281-021-30, 0281-031-51, 0281-031-52
 9 AND 0281-041-41, REQUESTING THE CALIFORNIA DEPARTMENT OF FINANCE
 10 APPROVE THE GRANTING OF SAID EASEMENT ON A STAND-ALONE APPROVAL
 11 BASIS AND APPROVING CERTAIN RELATED ACTIONS

12 PASSED, APPROVED AND ADOPTED THIS 12th day of March 2014, by the following vote:

| 13 Board Members | Ayes | Nays | Abstain | Absent |
|--------------------|------|------|---------|--------|
| 14 HEADRICK | X | | | |
| 15 HILL | X | | | |
| 16 LONGVILLE | | | | X |
| 17 MACIAS-HARRISON | | | | X |
| 18 MORRIS | X | | | |
| 19 O'TOOLE | X | | | |
| 20 SMITH | | | | X |

21 
 22 Lisa Connor, Secretary

23 The foregoing Resolution is hereby approved this 12th day of March, 2014.

24 

25 James P. Morris, Chairman
 26 Oversight Board for the Successor Agency to the
 27 Redevelopment Agency of the City of San Bernardino
 28

**CALIFORNIA DEPARTMENT OF FINANCE LETTER
TO THE
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN BERNARDINO
DATED APRIL 3, 2013
WITH RESPECT TO
OVERSIGHT BOARD RESOLUTION NO. SBOB/2012-20**

(See Attachment)

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**DEPARTMENT OF
FINANCE**

EDMUND G. BROWN JR. ■ GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 3, 2013

Mr. Carey Jenkins, Director of Housing and Community Development
City of San Bernardino
201 North E Street, Suite 301
San Bernardino, CA 92401

Dear Mr. Jenkins:

Subject: Approval of Oversight Board Action

The City of San Bernardino Successor Agency (Agency) notified the California Department of Finance (Finance) of its December 28, 2012 oversight board (OB) resolution on January 9, 2013. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, OB Resolution No. SBOB/2012-20 relating to recovering four parcels from the San Bernardino Economic Development Corporation, and transferring easements on certain parts of those properties to the San Bernardino County Flood Control District (SBCFCD), is approved.

The recovery of the properties was directed by the California State Controller's Office (SCO) as the result of its recent audit on the Agency's asset transfers. Pursuant to HSC section 34167.5 and 34178.8, the SCO has the authority to claw back assets that were inappropriately transferred to the city, county, or other public agencies. The transfer of easements to the SBCFCD will provide access and maintenance of flood control facilities.

Please direct inquiries to Nichelle Thomas, Supervisor, or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Teri Baker, Assistant to the City Manager, City of San Bernardino
Ms. Vanessa Doyle, Auditor-Controller Manager, San Bernardino County