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RESOLUTION NO. SBOB/2015-01

**RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO,
APPROVING A PROPOSED INTERLOCUTORY JUDGMENT IN SAN BERNARDINO
COUNTY SUPERIOR COURT CASE NO. CIVDS 1302927, *SAN BERNARDINO
COUNTY TRANSPORTATION COMMISSION VS. SAN BERNARDINO ECONOMIC
DEVELOPMENT CORPORATION, ET AL.***

RECITALS

WHEREAS:

1. Pursuant to California Health and Safety Code (HSC) section 34172(a)(1), the Redevelopment Agency of the City of San Bernardino (RDA) was dissolved on February 1, 2012.

2. As provided for in the HSC, on January 9, 2012 the Mayor and Common Council of the City of San Bernardino (Council) elected to serve as the Successor Agency to the RDA (Successor Agency).

3. The Oversight Board for the Successor Agency (Oversight Board) has been established pursuant to HSC section 34179 to assist in the wind-down of the dissolved RDA.

4. On March 22, 2013, the San Bernardino County Transportation Commission (Commission) filed an eminent domain proceeding designated as San Bernardino County Superior Court Case No. CIVDS 1302927 (Eminent Domain Proceeding) against the San Bernardino Economic Development Corporation (SBEDC), the RDA, and other defendants.

5. In the Eminent Domain Proceeding, the Commission seeks to acquire title to real property within the City of San Bernardino, described in Exhibit A to this Resolution (the Property).

6. At the time the Commission filed the Eminent Domain Proceeding, SBEDC was the record fee owner of the Property, having acquired title by transfer from the RDA in March 2011.

7. In November 2011, while it was record fee owner of the Property, SBEDC entered into a written agreement with the Commission and other parties, in which SBEDC agreed to convey a portion of the Property (Parcel 57) to the Commission in consideration of the

1 Commission's construction of the San Bernardino Transit Center on the Property (Transit Center
2 Agreement).

3 8. In March 2013, the California State Controller determined that the RDA's transfer
4 of the Property to SBEDC in March 2011 was unauthorized under the redevelopment dissolution
5 laws as thereafter enacted, and ordered SBEDC to transfer the Property to the Successor Agency.

6 9. On April 5, 2013, as authorized by the eminent domain law, the Commission
7 moved for an order granting it prejudgment possession of the Property, and deposited the sum of
8 \$1,704,000 with the California State Treasurer as probable compensation for the Property.

9 10. The Commission supported its motion for prejudgment possession of the Property
10 with a valuation of the Property by a state-certified appraiser in which the appraiser determined
11 that \$1,704,000 was just compensation for the taking of the Property.

12 11. Based on an independent review of the supporting documentation submitted by
13 the Commission to establish the amount of just compensation for the Property, and of other data
14 obtained through independent investigation, the Successor Agency has determined that the
15 Commission's determination of just compensation is reasonable.

16 12. On December 3, 2014, in compliance with the order of the Controller, SBEDC
17 transferred all of its interest in the Property to the Successor Agency.

18 13. The Successor Agency's fee ownership of the Property entitles it to receive all of
19 the compensation to be paid by the Commission for the taking of the Property.

20 14. The Commission claims an offset against its obligation to pay just compensation
21 for the taking of the Property, based on the agreement of SBEDC in the Transit Center
22 Agreement to convey Parcel 57 to the Commission. The Commission seeks an offset in the
23 amount of \$870,000, to be paid out of the \$1,704,000 deposit, based on the determination of its
24 appraiser that \$870,000 is the reasonable value of Parcel 57.

25 15. The Commission is willing to waive its claim to an offset on the condition that the
26 Successor Agency, SBEDC, and the City of San Bernardino (collectively, Defendants) do not
27 receive the unrestricted use of any of the proceeds from the Eminent Domain Proceeding. The
28 Commission agrees that Defendants shall not be deemed to have received the unrestricted use of

1 any proceeds that are (1) attached, executed upon, paid to, or otherwise appropriated or diverted
2 by any creditor of any of Defendants to satisfy any claim against Defendants or any of them; or
3 (2) declared by the State of California Department of Finance (Finance), to be an asset of
4 Defendant Successor Agency to be disposed of only as authorized by the DOF. Conversely, if
5 Finance approves the use of any part of the proceeds to satisfy the Commission's claim to an
6 offset, the Commission requires that the approved amount be paid to the Commission out of the
7 deposited funds.

8 16. The Council, acting as the Successor Agency, has determined that it is in the best
9 interests of the Successor Agency to stipulate to an interlocutory judgment under which the
10 Successor Agency would be entitled to receive the entire deposit amount of \$1,704,000, on the
11 conditions stated in the preceding paragraph.

12 17. The Successor Agency and the Commission have approved a proposed
13 Interlocutory Judgment in Condemnation in the Eminent Domain Proceeding, a copy of which is
14 attached as Exhibit A to this Resolution.

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

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

19 **Section 2.** The Successor Agency's approval of the proposed Interlocutory Judgment
20 in Condemnation attached to this Resolution as Exhibit A is approved.

21 **Section 3.** On behalf of the Oversight Board, the Successor Agency shall submit this
22 Resolution to Finance and request a written determination from Finance of whether Finance
23 approves the use of any part of the eminent domain proceeds to satisfy the Commission's claim
24 to an offset.

25 **Section 4.** The Successor Agency shall use all of the funds it receives from the
26 Eminent Domain Proceeding for the payment of eligible enforceable obligations approved by the
27 Oversight Board and Finance pursuant to applicable Recognized Obligation Payment Schedules.

28 **Section 5.** This Resolution shall take effect upon the date of its adoption.

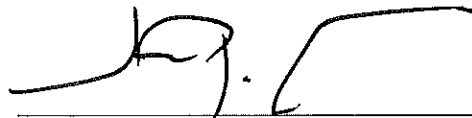
1 **RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO**
 2 **THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO,**
 3 **APPROVING A PROPOSED INTERLOCUTORY JUDGMENT IN SAN BERNARDINO**
 4 **COUNTY SUPERIOR COURT CASE NO. CIVDS 1302927, *SAN BERNARDINO***
 5 ***COUNTY TRANSPORTATION COMMISSION VS. SAN BERNARDINO ECONOMIC***
 6 ***DEVELOPMENT CORPORATION, ET AL.***

7 PASSED, APPROVED AND ADOPTED THIS 23rd day of February 2015, by the
 8 following vote, to wit:

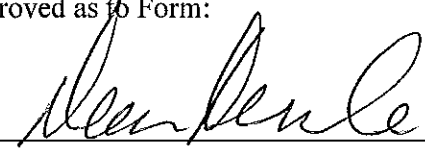
<u>Board Members:</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
9 HEADRICK	<u> X </u>	_____	_____	_____
10 MACIAS-HARRISON	<u> X </u>	_____	_____	_____
11 HILL	<u> X </u>	_____	_____	_____
12 LONGVILLE	<u> X </u>	_____	_____	_____
13 O'TOOLE	<u> X </u>	_____	_____	_____
14 SMITH	<u> X </u>	_____	_____	_____
15 MORRIS	<u> X </u>	_____	_____	_____

16 
 17 _____
 18 Secretary

19 The foregoing Resolution is hereby approved this 23rd day of February 2015.

20 
 21 _____
 22 James P. Morris, Chairman
 23 Oversight Board for the Successor Agency
 24 to the Redevelopment Agency of the City of
 25 San Bernardino

26 Approved as to Form:

27 By: 
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 Counsel

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Attorneys for Plaintiff
SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

SAN BERNARDINO COUNTY
TRANSPORTATION COMMISSION,

Plaintiff,

vs.

SAN BERNARDINO ECONOMIC
DEVELOPMENT CORPORATION, et al.,

Defendants.

Case No: CIVDS 1302927

ASSIGNED FOR ALL PURPOSES TO:
HON. DONALD ALVAREZ, DEPT. S23J

[PROPOSED] INTERLOCUTORY
JUDGMENT IN CONDEMNATION

[Parcel Nos.: SBPR 57, 58, 68, 74, 75]

Date Action Filed: March 22, 2013

[EXEMPT FROM FILING FEES - GOV.
CODE, § 6103]

**EXHIBIT A TO OVERSIGHT BOARD
RESOLUTION**

1 Plaintiff San Bernardino County Transportation Commission (the "Commission"), on the
2 one hand, and Defendants San Bernardino Economic Development Corporation, a California
3 non-profit corporation ("SBEDC"), and the City of San Bernardino for itself ("City") and as the
4 successor to the Redevelopment Agency of the City of San Bernardino ("Successor Agency"), on
5 the other (collectively "Defendants"), having previously stipulated to the facts, terms and
6 conditions set forth herein and having requested the Court to make and enter an Interlocutory
7 Judgment in Condemnation consistent with such stipulation with respect to the condemnation by
8 the Commission of the real property or interests in real property as described in Paragraph 1
9 below, and the parties having waived a Statement of Decision, Notice of Entry of Judgment,
10 costs and fees;

11 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
12 FOLLOWS:

13 1. **The Property.** The Commission commenced the above entitled eminent domain
14 action to acquire certain property interests in real property located in the County of San
15 Bernardino, more particularly described below, bearing San Bernardino County Assessor's
16 Parcel Numbers 0136-111-14, 0136-111-15, 0136-111-23, and 0136-111-24, designated as
17 Commission Parcels SBPR 57, 58, 68, 74, and 75 (collectively, the "Subject Property");

18 (a) **COMMISSION PARCEL NUMBER SBPR 57** is a commercial lot
19 located west of "E" Street in the City of San Bernardino, California, and consists of a fee simple
20 interest in Assessor's Parcel Number 0136-111-24;

21 (b) **COMMISSION PARCEL NUMBER SBPR 75** is located at 174 South
22 "E" Street, San Bernardino, California, and consists of a fee simple interest in Assessor's Parcel
23 Number 0136-111-15;

24 (c) **COMMISSION PARCEL NUMBER SBPR 74** is located at 170 South
25 "E" Street, San Bernardino, California, and consists of a fee simple interest in Assessor's Parcel
26 Number 0136-111-14; and

27 (d) **COMMISSION PARCEL NUMBERS SBPR 58 AND 68** are located in
28 the City of San Bernardino, California, and consist of (a) a 1,888 square foot fee simple

1 acquisition; (b) a 43,591 square foot permanent easement; (c) a 87,605 square foot temporary
2 construction easement; (d) a 1,190 square foot permanent easement; (e) a 652 square foot
3 permanent easement; and (f) a 8,814 square foot permanent easement in Assessor's Parcel
4 Number 0136-111-23.

5 These interests in real property are described in the Commission's complaint on file in
6 this matter and in Exhibit A attached to this Judgment.

7 2. **Purpose and Authority for the Taking.** Pursuant to a Resolution of Necessity
8 attached to the complaint on file in this action, the Subject Property is being acquired for a public
9 purpose: the construction and operation of the Downtown San Bernardino Passenger Rail Project
10 ("Project"). The Commission is authorized and entitled to exercise the power of eminent domain
11 for public purposes under Article I, Section 19, of the California Constitution, California Public
12 Utilities Code section 130220.5, and California Code of Civil Procedure sections 1240.010 through

13 1273.050. The use for which the Commission seeks to condemn the Subject Property in
14 connection with the Project is authorized by law and is a public use; the public interest, safety,
15 and necessity require the Project; the Project is planned and located in the manner that will be
16 most compatible with the greatest public good and the least private injury; and the Subject
17 Property is necessary for the Project.

18 3. **Ownership.** One or more Defendants are fee owners of or hold an interest in the
19 Subject Property.

20 4. **Deposit of Compensation and Possession.** On March 21, 2013, the Commission
21 deposited with the State Treasurer \$1,704,000.00 as the probable amount of compensation to be
22 paid for the taking of the Subject Property. Pursuant to the Court's entry of an order for
23 prejudgment possession, the Commission was authorized and empowered to enter upon and take
24 prejudgment possession of the Subject Property for the purposes described in the Commission's
25 Complaint on file in this action.

26 5. **Just Compensation for the Subject Property.** The total sum to be paid as just
27 compensation for the taking of Defendants' interests in the Subject Property shall be One Million
28 Seven Hundred Four Thousand Dollars and 0/100 (\$1,704,000.00), inclusive of attorneys' fees,

1 costs, and interest ("Payment"). Said Payment shall equal the total amount of just compensation
2 to Defendants for the Subject Property and all other claims and damages which Defendants could
3 have as a result of this action, the acquisition of the Subject Property, and the construction of the
4 Project in the manner proposed, including, but not limited to, severance damages, loss of
5 goodwill, loss of or damage to improvements pertaining to the realty, fixtures, equipment, and/or
6 inventory, precondemnation damages, claims for attorneys' fees, litigation expenses, statutory
7 costs, interest, relocation benefits and/or costs, and any and all other kinds of compensation,
8 damage, or other claims arising out of or relating to the taking of the Subject Property. Payment
9 of such sum shall fully and forever discharge and release all claims and causes of action, whether
10 now known or now unknown, which Defendants may have against the Commission in this action.

11 6. **Payment and Interest Earned on Deposit.** The Court shall reserve jurisdiction
12 to determine at a subsequent date the disposition of the sum of \$1,704,000.00 on deposit with the
13 California State Treasurer.

14 7. **Offset Pursuant to Agreement.** Pursuant to the San Bernardino Transit Center
15 (SBTC) Planning, Design, Construction, Operating and Maintenance Agreement dated
16 November 7, 2011, Defendant SBEDC owes the Commission \$870,000.00 as a result of the
17 required land dedication by Defendant SBEDC to the Commission within Sections 4.1 and 4.2 of
18 said Agreement, which amount the Commission has claimed as an offset against the Payment.
19 The Commission is hereby waiving its right to the offset amount on the condition that
20 Defendants do not receive the unrestricted use of any of the proceeds from this eminent domain
21 action. Defendants shall not be deemed to have received the unrestricted use of any proceeds
22 from this eminent domain action to the extent that those proceeds are attached, executed upon,
23 paid to, or otherwise appropriated or diverted by any creditor of any of Defendants to satisfy any
24 claim against Defendants or any of them. In addition, it is assumed by the parties hereto that the
25 State of California Department of Finance (DOF), which has authority over the affairs of
26 Defendant Successor Agency as part of the ongoing winding-down of the former Redevelopment
27 Agency of the City of San Bernardino, will declare the Payment to be an asset of Defendant
28 Successor Agency to be disposed of only as authorized by the DOF, and will not approve the use

1 of any part of the Payment to pay any obligation of Defendant SBEDC, including but not limited
2 to any obligation to the Commission. In the event that the DOF does make such a declaration,
3 Defendants shall not be deemed to have received the unrestricted use of any proceeds from this
4 eminent domain action. In the event that the DOF approves the use of any part of the Payment to
5 satisfy the obligation of Defendant SBEDC to the Commission, the approved amount shall be
6 paid to the Commission out of the Payment.

7 8. Entry of Final Order of Condemnation. Upon addressing all other interests in
8 this action, the Court may, upon application of the Commission and without further notice to
9 Defendants, enter a Final Order of Condemnation which condemns the Subject Property and
10 conveys title to the Subject Property to the Commission.

11
12 DATED: _____

13 JUDGE OF THE SUPERIOR COURT

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