



**Contra
Costa
County**

To: Board of Supervisors
From: Catherine Kutsuris, Conservation and Development Director
Date: December 4, 2012

Subject: Amending and Restating the Joint Exercise Of Powers Agreement for the Pleasant Hill BART Station Leasing Authority

RECOMMENDATION(S):

ADOPT Resolution 2012/454 authorizing the Chair of the Board of Supervisors to execute an amendment and restatement of the Joint Exercise of Powers Agreement for the Pleasant Hill BART Station Leasing Authority (the "Authority"), as previously amended between the San Francisco Bay Area Rapid Transit District and the County of Contra Costa, with the consent of the Successor Agency to the Contra Costa County Redevelopment Agency (the "Successor Agency") to remove the dissolved Contra Costa County Redevelopment Agency, through the Successor Agency, from the Authority.

FISCAL IMPACT:

Removing the Successor Agency from the Authority will save administrative costs by eliminating the need to get actions of the Authority approved by the Oversight Board of the Successor Agency and the State Department of Finance. State law allows the Department of Finance up to 45 days to approve an action of the Oversight Board or return it to the Oversight Board for its reconsideration.

BACKGROUND:

To facilitate the development of a mixed-use community of residential,

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **12/04/2012** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 4, 2012

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: MaureenToms, 925
674-674-7878

By: Carrie Del Bonta, Deputy

cc:

BACKGROUND: (CONT'D)

employment, and retail uses around the Pleasant Hill/Contra Costa Centre Bay Area Rapid Transit (BART) Station (the "Transit Village Project") the County, BART and the dissolved Contra Costa County Redevelopment Agency (Dissolved RDA) executed in 2004 a joint exercise of powers agreement (the "JEPA") creating the Pleasant Hill BART Leasing Authority (the "Authority"). The purpose of the Authority is to provide a conduit for leasing and development of the Transit Village Project by leasing specified property from BART, and in turn, sub-leasing that property to a developer for construction of the Transit Village Project. The Dissolved RDA, as a member of the Authority, committed to financing a variety of public improvements under various partnering documents. The improvements included the BART patron replacement parking garage, backbone infrastructure (roads, drainage, etc.) and place making infrastructure (parks, plazas, street furniture). The Transit Village Project broke ground in 2008 and opened the first phase in 2010, but is not yet fully completed.

The California state legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies in California. The Contra Costa County Board of Supervisors declared that the County would act as successor agency (the "Successor Agency") for the Dissolved RDA effective February 1, 2012. Pursuant to Assembly Bill 1484, enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the County. The amended Dissolution Act requires the Successor Agency to wind down the affairs of the Dissolved RDA and Health and Safety Code Section 34171(d)(1)(E) authorizes the Successor Agency to terminate any existing contracts and provide the necessary and required compensation for such termination.

Because the development of the Transit Village Project has not been completed and lease activity will occur for up to 99 years, it would not be desirable to terminate the JEPA. However, the role of the Dissolved RDA in development of the Transit Village Project and the adoption and implementation of the amended Dissolution Act make it such that the removal of the Dissolved RDA (through the Successor Agency) from the Authority is both necessary and desirable. The Dissolution Act eliminated the tax increment revenue stream and the Dissolved RDA's role in economic development, so there is no advantage to maintain the Successor Agency's membership in the Authority. The parties desire to enter into an amended and restated JEPA as a means of complying with the amended Dissolution Act by causing the removal of the Dissolved RDA and preserving a means of accomplishing the cooperation and coordination among the remaining members that is necessary to provide for the completion and operation of the Transit Village Project.

As contemplated under the original JEPA, the ground lease payments received by the Authority under the development lease were to be used, first, to reimburse the Dissolved RDA for the cost of temporary parking improvements, and then divided between the County and BART. Under these terms the Dissolved RDA had only the right to receive the sum of Six Hundred Fifty Thousand Dollars (\$650,000) to pay for the temporary

parking, which payment has been received by the Successor Agency. The balance of the ground lease payments are now required to be split 75% - 25% between the County and BART, respectively, with some additional recovery of costs provided to the County in the form of priority ground rents and bonus rent. The Successor Agency, as the successor in interest to the Dissolved RDA, received the entire \$650,000 temporary parking improvement payment and under the original JEPA neither the Dissolved RDA nor the Successor Agency is entitled to any rental income or additional revenue from the development lease.

The original JEPA also contemplated the construction of one hundred homes on property to be sold by BART to the Authority and subsequently conveyed to a developer. To effectuate this agreement, the Authority and BART executed a separate purchase and sale agreement for the property at the same time as the development lease was executed. In that agreement BART would receive the net proceeds of sale of the homes with the Dissolved RDA receiving 10% of the sales proceeds over \$553,000 per house. The term of the purchase and sale agreement has expired and is no longer in effect. Because of declines in economic conditions, market rate for-sale homes are no longer feasible at the site. BART has no further interest in conveying fee-simple ownership of its property to the Authority.

The removal of the Dissolved RDA from the Authority is revenue neutral. It neither changes the revenue due to the Successor Agency, nor does it change payment obligations of the Successor Agency. The amended and restated JEPA acknowledges that accomplishing the development of the Transit Village Project requires continued close cooperation and coordination between BART and the County. Under this agreement, BART and the County would continue to be empowered by law to undertake certain project and programs and possess the power and authorization to buy and sell, own and lease property, to construct, maintain and operate public improvements, to incur debts and other obligations, and to protect public health, safety and welfare.

Under Section 34179(h), the Successor Agency and Oversight Board will be required to notify the Department of Finance if the recommended actions are approved. The Department of Finance will have an opportunity to review any actions taken. If the Department of Finance does not challenge any of the actions taken, the parties will have the necessary finality to proceed to remove the Dissolved RDA, through the Successor Agency, as a member of the Authority and allow the newly constituted Authority to continue to conduct the necessary business to accomplish the development of the Transit Village Project.

CONSEQUENCE OF NEGATIVE ACTION:

The Successor Agency would remain a member of the Authority and any action of the Authority would require approval of the Oversight Board to the Successor Agency and State Department of Finance.

CHILDREN'S IMPACT STATEMENT:

Not Applicable

ATTACHMENTS

Resolution No. 2012/454

Original JPA

1st Amendment

2nd Amendment

Amended and Restated JEPA Redline

Amended and Restated JEPA