

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE TRANSFERRING THE CORPORATION YARD REAL PROPERTY ASSET LOCATED AT 5679 HORTON STREET TO THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY PURSUANT TO CALIFORNIA HEALTH & SAFETY CODE SECTION 34167.5

WHEREAS, the City of Emeryville is a municipal corporation organized and existing under the laws of the State of California ("City"); and

WHEREAS, the Emeryville Redevelopment Agency ("Agency") was a public body, corporate and politic, organized and existing under the California Community Redevelopment Law (Health & Safety Code § 33000 *et seq.* ("CRL")); and

WHEREAS, the City Council of the City of Emeryville adopted Ordinance No. 76-04 effective as of July 27, 1976, thereby approving and adopting the Emeryville Redevelopment Plan for the Emeryville Redevelopment Project Area (the "Emeryville Redevelopment Project"); and

WHEREAS, the City Council of the City of Emeryville adopted Ordinance No. 87-07 effective as of October 20, 1987, thereby approving and adopting the Shellmound Park Redevelopment Plan for the Shellmound Park Redevelopment Project Area (the "Shellmound Park Redevelopment Project"); and

WHEREAS, on June 3, 1999, the Agency acquired the real property located at 5679 Horton Street, Emeryville (the "Corporation Yard"), in order to facilitate the extension of the Horton Street right of way and thereafter allowed the City to utilize the buildings located on the remainder of the property for use by its Public Works Department as a Corporation Yard; and

WHEREAS, on June 4, 2009, the City of Emeryville and Agency entered into a Purchase Agreement related to the transfer of the Corporation Yard by the Agency to the City and thereafter the Corporation Yard was transferred by the Agency to the City by grant deed dated February 25, 2011, and recorded on March 4, 2011 in the Official Records of the Alameda County Recorder at Instrument No. 2011-72406; and

WHEREAS, in March 2011, the Agency also transferred several real property assets and pledged tax increment funds to the City in order to complete long planned redevelopment projects on the parcels of real property; and

WHEREAS, on June 28, 2011, Governor Brown signed AB X1 26 (the "Dissolution Act") into law, and thereafter on December 29, 2011, in California Redevelopment Association v. Matosantos, (2011) 53 Cal. 4th 231, the California Supreme Court upheld the constitutionality of the Dissolution Act, which dissolved all of the redevelopment agencies in California effective February 1, 2012; and

WHEREAS, with the enactment of the Dissolution Act, on January 17, 2012, the City Council of the City of Emeryville adopted Resolution No. 12-12 electing to have the City of Emeryville serve as Successor Agency to the Emeryville Redevelopment Agency

("Successor Agency") and thereby assumed the obligation to wind down the affairs of the former Redevelopment Agency; and

WHEREAS, Health and Safety Code Section 34167.5 obligates the State Controller to review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between a city or county, or city and county that created a redevelopment agency, and the redevelopment agency; and

WHEREAS, if an asset transfer did occur during that time period, and the City is not contractually committed to a third party for the expenditure or encumbrance of those assets, then to the extent not prohibited by state or federal law, the Controller shall order the available assets to be returned to the City as Successor Agency; and

WHEREAS, on April 20, 2012, the State Controller issued an order to the City requiring it to return all assets transferred by the former Redevelopment Agency to the City after January 1, 2011 back to the Successor Agency; and

WHEREAS, Health and Safety Code Section 34181 provides that certain 'governmental purpose' assets can be transferred by the Successor Agency to the City with the approval of the Emeryville Oversight Board; and

WHEREAS, on June 12, 2012, in accordance with Section 34181 of the Dissolution Act, the Emeryville Oversight Board adopted Resolution No. OB06-12 directing the Successor Agency to transfer to the City of Emeryville the following list of real property assets which have been "constructed and used for a governmental purpose":

- Christie Ave Park – Park/Open Space Land Use
- Doyle Hollis Park – Park/Open Space Land Use
- Child Development Center – Medium Density Residential Land Use
- Recreation Center – Mixed Use w/ Residential – Neighborhood Retail Overlay
- City Hall Parking Lot – Public Land Use
- Shellmound Street right of way – Public Street
- 40th Street at Hollis Street right of way – Public Street
- portion of 40th Street Overcrossing – Public Street
- portion of Stanford Avenue – Public Street
- sliver of land along the Union Pacific Railroad main line – Public Right of Way
- portion of 59th Street – Public Street
- Amtrak Bridge west tower – Public Right of Way; and

WHEREAS, Health and Safety Code Section 34179.5 required the Successor Agency to hire an accountant to undertake a due diligence review of the Successor Agency's funds to determine the unobligated balances of the Successor Agency available for transfer to the taxing entities; and

WHEREAS, Section 34179.5(c)(2) provides that the due diligence review shall determine

the dollar value of assets transferred after January 1, 2011 through June 30, 2012 by the Agency or Successor Agency to the City, and in determining the amount of “net balances available” for transfer to the taxing entities, Section 34179.5(c)(6) provides that the value of assets identified pursuant to 34179.5(c)(2) that were transferred without the benefit of an enforceable obligation shall be added to the amount the Successor Agency must transfer to the taxing entities; and

WHEREAS, Health and Safety Code Section 34171 (d)(2) provides that an enforceable obligation does not include an agreement between the City and its Redevelopment Agency and thus the value of non-housing real property assets that were transferred by the Redevelopment Agency to the City in March 2011, including the Corporation Yard, and were not subsequently authorized by the Emeryville Oversight Board to be transferred to the City will be added to the amount that the Successor Agency must transfer to the taxing entities if they are not returned; and

WHEREAS, in order to avoid having the value of real property assets added to the amount of funds that the Successor Agency must pay to the taxing entities, on October 2, 2012, the City Council and Successor Agency adopted resolutions to require the City to return the following real property back to the Successor Agency:

- Horton Landing Park – Park/Open Space Land Use
- 48th St Community Garden – Park/Open Space Land Use
- Greenway @ 59th – Park/Open Space Land Use
- Greenway @ Parcel D – Park/Open Space Land Use
- Art & Cultural Center - Public Land Use
- Shellmound Street Lot - Mixed Use with Residential/Regional Retail Overlay Land Use
- South Bayfront Site B - Mixed Use with Residential/Regional Retail Overlay Land Use; and

WHEREAS, notwithstanding the painstaking detail involved in the aforementioned process, only recently did it become evident to staff that the Corporation Yard site, which had been transferred by the Agency to the City on March 4, 2011 and subsequently held to be unauthorized by Section 34167.5, had neither been approved as a “governmental purpose” asset to be transferred by the Successor Agency to the City pursuant to Oversight Board Resolution No. OB 06-12, nor was it appropriately returned by the City to the Successor Agency in October 2, 2012; and

WHEREAS, it is recommended that the real property asset located at 5679 Horton Street, Emeryville, California, and legally described in Exhibit A attached hereto and incorporated herein by this reference, be returned by the City of Emeryville to the Successor Agency as required by the State Controller’s order of April 20, 2012 issued in accordance with Health and Safety Code Section 34167.5; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville as follows:

SECTION 1. The above recitals are true and correct and are adopted as the findings of the City Council of the City of Emeryville.

SECTION 2. The City Council of the City of Emeryville hereby affirmatively transfers the real property asset located at 5679 Horton Street, Emeryville, California and legally described in Exhibit A attached hereto and incorporated herein by this reference, to the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency.

SECTION 3. The City Manager, City Attorney and Chief Financial Officer are hereby authorized and directed to take such other and further actions, and sign such other and further documents, including but not limited to all necessary actions as may be required to perfect the transfer of fee title to the real property asset identified in Exhibit A attached hereto and incorporated herein by this reference, to the City of Emeryville as Successor Agency to the Emeryville Redevelopment Agency, be it a grant deed, quitclaim deed, certificate of acceptance, or any other instrument as is necessary and proper in order to implement this Resolution on behalf of the City Council of the City of Emeryville.

SECTION 4. The City Council of the City of Emeryville hereby declares that every word, sentence, section, paragraph, clause or phrase of this Resolution and its exhibits are severable. If for any reason, any word, sentence, section, paragraph, clause or phrase of this Resolution and its exhibits are held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining words, sentences, sections, paragraphs, clauses or phrases.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 20, 2017, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY

EXHIBIT A
LEGAL DESCRIPTION OF THE SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: PARCEL "A" AS SHOWN ON PARCEL MAP 7868, FILED IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY ON FEBRUARY 14, 2005 IN MAP BOOK 280 AT PAGES 41 AND 42.

PARCEL 2: A NON-EXCLUSIVE EASEMENT TO CROSS AND RE-CROSS WITH AND FOR THE MANEUVERING OF MOTOR VEHICLES, APPURTENANT TO PARCEL 1, HEREINABOVE DESCRIBED, OVER THE FOLLOWING DESCRIBED LAND: COMMENCING AT THE INTERSECTION OF THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF LOT 8 IN BLOCK 37 WITH THE EASTERN LINE OF LANDREGAN, FORMERLY 4TH STREET, AS SAID LOT, BLOCK AND STREET ARE SHOWN ON THE "MAP OF THE PROPERLY OF L. M. BEAUDRY & G. PELADEAU", FILED NOVEMBER 6, 1876, IN BOOK 6 OF MAPS, PAGE 14, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY; RUNNING THENCE ALONG SAID EXTENDED LINE AND ALONG THE NORTHERN LINE OF SAID LOT 8, SOUTH 75°28' WEST, 208.44 FEET; THENCE SOUTH 14°32' EAST, 72 FEET TO THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE FROM SAID ACTUAL POINT OF BEGINNING, SOUTH 14°32' EAST, 33 FEET; THENCE SOUTH 75°28' WEST, 98.87 FEET TO THE EASTERN LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC COMPANY; THENCE ALONG THE LAST NAMED LINE, NORTHERLY 33.01 FEET TO A LINE DRAWN SOUTH 75°28' WEST FROM THE ACTUAL POINT OF BEGINNING; AND THENCE NORTH 75°28' EAST, 98.06 FEET TO THE ACTUAL POINT OF BEGINNING.

PARCEL 3: A NON-EXCLUSIVE EASEMENT FOR SEWER LINES, PUBLIC UTILITIES AND INGRESS AND EGRESS OF MOTOR VEHICLES AND PEDESTRIANS, APPURTENANT TO PARCEL 1, HEREINABOVE DESCRIBED, OVER THE FOLLOWING DESCRIBED LAND: COMMENCING AT THE INTERSECTION OF THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF LOT 8 IN BLOCK 37 WITH THE EASTERN LINE OF LANDREGAN, FORMERLY 4TH STREET, AS SAID LOT, BLOCK AND STREET ARE SHOWN ON THE "MAP OF THE PROPERLY OF L. M. BEAUDRY & G. PELADEAU", FILED NOVEMBER 6, 1876, IN BOOK 6 OF MAPS, PAGE 14, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY; RUNNING THENCE ALONG SAID EXTENDED LINE AND ALONG THE NORTHERN LINE OF SAID LOT 8, SOUTH 75°28' WEST, 208.44 FEET; THENCE SOUTH 14°32' EAST, 55 FEET TO THE ACTUAL POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; RUNNING THENCE FROM SAID ACTUAL POINT OF BEGINNING, SOUTH 14°32' EAST, 50 FEET; THENCE NORTH 75°28' EAST, 208.75 FEET TO THE DIRECT EXTENSION SOUTHERLY OF THE EASTERN LINE OF LANDREGAN STREET; THENCE ALONG LAST SAID EXTENDED LINE, NORTH 14°42' WEST, 105 FEET TO THE DIRECT EXTENSION EASTERLY OF THE NORTHERN LINE OF SAID LOT 8; THENCE ALONG LAST SAID EXTENDED LINE, SOUTH 75°28' WEST, 48 FEET; THENCE SOUTH 14°42' EAST, 55 FEET TO A LINE DRAWN NORTH 75°28' EAST FROM THE ACTUAL POINT OF BEGINNING; AND THENCE SOUTH 75°28' WEST, 160.60 FEET TO THE ACTUAL POINT OF BEGINNING.

APN: 049-1552-001