

## **STAFF REPORT**

### **CITY OF SAN LEANDRO SUCCESSOR AGENCY OVERSIGHT BOARD**

**DATE:** May 10, 2012

**TO:** Successor Agency Oversight Board

**FROM:** Cynthia Battenberg, Business Development Manager

**SUBJECT:** Oversight Board Approval of Successor Agency Termination of Disposition and Development Agreement with Batarse Family Trust U.T.A. and McLellan Marina, LLC.

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#### **SUMMARY AND RECOMMENDATION**

Staff recommends that the Successor Agency Oversight Board make a motion to approve the Termination of Disposition and Development Agreement with the Batarse Family Trust, U.T.A. and McLellan Marina, LLC, for 575 Marina Boulevard as approved by the Successor Agency.

#### **BACKGROUND**

In 2001, the City of San Leandro Redevelopment Agency entered into a Disposition and Development Agreement (DDA) with the Batarse Family Trust U.T.A. (Batarse) for the development of an automobile dealership at 575 Marina Boulevard (property). This is the site of the former Yokota nursery. The DDA was amended in late 2001 to remove a requirement that the Redevelopment Agency retain a portion of the property to develop a road, and then again in 2002 to adjust the lot line to facilitate creation of a shared driveway.

The property was developed consistent with the DDA and a Suzuki/Mitsubishi dealership opened in 2008. The recession impacted the economic viability of the automobile dealership and in 2011, the Redevelopment Agency executed a third amendment to the DDA to approve the lease of the developed property to Paramedics Plus, the medical ambulance service provider of Alameda County.

#### **Analysis**

The property is currently in escrow and a condition of the DDA is a requirement that the Redevelopment Agency approve the sale, lease or other transfer of the property prior to June 13, 2018. Batarse and McLellan Marina, LLC, the buyer, have requested Redevelopment Agency approval of the sale. Staff recommends approval of the sale.

This request triggered staff evaluation of the remaining terms and conditions of the DDA. The DDA includes a provision that the Redevelopment Agency provide a sales tax rebate of 50% of the net sales tax generated through June 13, 2018 or up to a total of \$600,000. The remaining tax

rebate is \$329,597.74. Should automobile sales recur on the property prior to June 13, 2018, payment of the sales tax rebate would be considered an enforceable obligation to be paid by former Redevelopment Agency tax increment. This obligation was not included on the Recognized Enforceable Obligation Payment Schedule (ROPS) of the Successor Agency because of the lease with Paramedics Plus.

As the construction and development obligations described in the DDA have been satisfied, staff recommended that the City, serving as Successor Agency to the Redevelopment Agency, terminate the DDA thereby allowing the property to be sold or leased without Successor Agency approval and ending any outstanding sales tax rebate obligations: the two conditions which would otherwise remain until June 13, 2018. The City is scheduled to take action on this recommendation at the May 7, 2012 City Council meeting.

Staff similarly recommends Successor Oversight Board approval of the Termination of the DDA.

### **Legal Analysis**

The report and recommendation have been reviewed and approved as to form by the City Attorney's Office.

### **Attachments**

- Termination of Disposition and Development Agreement

Recording requested by and when recorded mail to:  
City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Attention: Executive Director

EXEMPT FROM RECORDING FEES PER  
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

## TERMINATION OF DISPOSITION AND DEVELOPMENT AGREEMENT

This Termination of Disposition and Development Agreement (this "**Agreement**"), dated as of \_\_\_\_\_, 2012 (the "**Effective Date**"), is executed by and among the City of San Leandro, a municipal corporation (the "**City**"), acting in its capacity as Successor Agency to the Redevelopment Agency of the City of San Leandro (the "**Agency**"), Anthony A. Batarse Jr., as trustee of the Batarse Family Trust, U.T.A. dated May 7, 1987, a revocable living trust ("**Batarse**"), and McLellan Marina, LLC, a California limited liability company ("**McLellan**"). The City, Batarse and McLellan are hereinafter collectively referred to as the "**Parties.**"

### RECITALS

**WHEREAS**, the Agency and Batarse entered into that certain unrecorded Disposition and Development Agreement dated as of October 1, 2001 (the "**Original DDA**"), as subsequently amended by that certain Amendment to the Disposition and Development Agreement between the Redevelopment Agency of the City of San Leandro and Batarse Family Trust, U.T.A. dated November 14, 2001, that certain Second Amendment to the Disposition and Development Agreement between the Redevelopment Agency of the City of San Leandro and Batarse Family Trust, U.T.A. dated April 1, 2002, and that certain Third Amendment to Disposition and Development Agreement dated as of February 16, 2011 (the "**Third Amendment**") concerning the real property located at 575 Marina Boulevard in the City of San Leandro, County of Alameda, and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "**Property**"). The Original DDA as amended by all of amendments described in this Recital is hereafter referred to as the "**DDA**";

**WHEREAS**, Section 4.06 (d) of the Original DDA provides that Agency approval is required for the sale, lease or other transfer of the Property at any time prior to June 13, 2018;

**WHEREAS**, Section 1.03 of Part Two of the Original DDA, as amended by the Third Amendment, provides that if and when the Property is occupied by an automobile dealership, the Agency will be required to annually make certain payments of tax increment funds in amounts equivalent to 50% of net sales tax generated by operations on the Property through February 16, 2021 or until a specified cumulative total payment has been made;

**WHEREAS**, Batarse desires to sell the Property to McLellan, and McLellan desires to acquire the Property from Batarse; and

**WHEREAS**, pursuant to Resolution No. 2012-001, adopted by the City Council of the City of San Leandro on January 9, 2012, the City succeeded to the interests of the Agency by operation of law upon dissolution of the Agency on February 1, 2012 pursuant to Assembly Bill x1 26.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The Parties each acknowledge the truth of the foregoing recitals which are incorporated herein by this reference.
2. The City, acting in its capacity as Successor Agency to the dissolved Agency, hereby approves the conveyance of the Property from Batarse to McLellan, and hereby relinquishes any rights to approve any future sale, transfer, conveyance, assignment or lease of the Property or improvements located thereon, that may accrue to the City pursuant to Section 3 of that certain Grant Deed dated as of November 13, 2001 and recorded in the Official Records of Alameda County on November 14, 2001 as Instrument No. 2001444278 (the “**Grant Deed**”).
3. The Parties each acknowledge that the construction and development obligations described in the DDA have been satisfied.
4. The Parties each agree that the DDA is hereby terminated; provided however, the Parties each acknowledge and agree that all provisions of the DDA that relate to indemnification obligations and which expressly state that they survive termination of the DDA shall continue in full force and effect.
5. The Parties each agree that neither the City nor any other entity acting as successor to the Agency shall have any obligation to make payments of tax increment funds or any other payment pursuant to Section 1.03 of Part Two of the DDA or pursuant to any other provision of the DDA or the amendments thereto.
6. The City hereby acknowledges and agrees that as of the Effective Date, neither the City nor any other entity acting as successor to the Agency shall have any reversionary interest in the Property pursuant to the DDA, or any power of termination pursuant to the DDA or pursuant to Section 4 of the Grant Deed.
7. This Amendment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

*SIGNATURES ON FOLLOWING PAGE(S)*

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the date first written above.

**BATARSE:**

Anthony Batarse, Jr., as trustee of the Batarse Family Trust, U.T.A. dated May 7, 1987, a revocable living trust

By: \_\_\_\_\_

**MCLELLAN:**

McLellan Marina, LLC, a California limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

City of San Leandro, a municipal corporation, acting in its capacity as Successor Agency to the Redevelopment Agency of the City of San Leandro

By: \_\_\_\_\_

Chris Zapata, City Manager

**ATTEST:**

By: \_\_\_\_\_

Marian Handa, Agency Secretary

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Jayne Williams, City Attorney

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Exhibit A – 575 Marina Blvd. APN 75-87-4-16

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

Parcel One:

A portion of that real property described in that certain Lot Line Adjustment for Assessor's Parcel 075-0087-004-012 and portion of 075-0087-004-011 filed July 31, 2002 as Series No. 2002-325561; and Assessor's Parcel 075-0087-007-05 filed as Document No. 2001-125153 of Alameda County Records, further described as follows:

Beginning at the most Westerly corner of above said Assessor's Parcel 075-0087-007-05, being a point on the Intersection of Southeasterly line of Marina Boulevard, right of way and Northeasterly line of the Southern Pacific Railroad right of way; thence along said Southeasterly line the following courses; North 60° 04' 41" East, 141.22 feet; thence North 63° 20' 38" East 59.46 feet; thence leaving said Easterly line South 27° 55' 36" East, 58.61 feet; thence South 47° 32' 56" East, 309.64 feet; thence South 42° 11' 32" West, 18.41 feet; thence South 48° 45' 47" East, 191.44 feet; thence South 50° 13' 32" East, 506.84 feet; thence South 63° 17' 59" West 312.13 feet to the above said Northeasterly line of the Southern Pacific Railroad right of way; thence along the last said Northeasterly line the following courses: North 41° 15' 35" West, 1021.64 feet, to the point of beginning, containing 236.642 square feet of 5.43 acres, more or less.

APN: 075-0087-004-16

Parcel Two:

A non-exclusive easement for ingress and egress appurtenant to Parcel 1, hereinabove described, over the following described property:

A portion of that real property in that certain Lot Line Adjustment for Assessor's Parcel 075-0087-003-02, 075-0087-004-04 and 075-0087-004-06 filed November 14, 2001 in Document 2001444276, Alameda County Records, further described as follows:

Commencing at the most Northwesterly corner of Parcel B above as said Lot Line Adjustment; thence along the Northeasterly right of way of "Marina Boulevard" North 63° 20' 38" East, 13.43 feet to the true point of beginning for this description; thence continuing along last said right of way line North 63° 20' 38" East, 93.98 feet to the beginning of a curve concave Easterly having a radius of 50.00 feet, a radial line to said curve bears North 57° 20' 22" West; thence along said curve Southwesterly and Southerly through a central angle of 59° 19' 00", degrees an arc length of 51.76 feet; thence South 27° 55' 36" East, 11.21 feet; thence South 47° 32' 56" East, 26.04 feet to the beginning of a curve concave Northwesterly having a radius of 40.00 feet; a radial line to said curve bears North 13° 19' 21" West, thence along said curve Easterly, Southerly and Westerly through a central angle of 291° 32' 32" degrees an arc length of 203.53 feet; thence North 47° 32' 56" West, 33.82 feet; thence North 27° 55' 36" West, 19.99 feet to the beginning of a curve concave Southwesterly having a radius of 50.00 feet, a radial line to said curve bears North 63° 20' 38" East, thence along said curve Northerly and Northwesterly through a central angle of 59° 19' 00" degrees an arc length of 51.76 feet to the point of beginning.

Excepting therefrom that portion lying within the lines of Parcel One, hereinabove described.

APN: 075-0087-004-16