

Title

US HWY 17-92 CRA - Consider approval of the first amendment to the CRA Redevelopment and Construction Grant Agreement between Dick Baird, Inc., d/b/a Bill Ray Nissan, and the US 17-92 CRA, related to redevelopment of the property located at 2724 N US Hwy 17-92, extending the project completion date until December 31, 2016. District4 - Henley (Sonia Fonseca)

..Department

County Manager's Office

..Division

Economic Development Division

..Authorized By

Nicole Guillet

..Contact/Phone number

Sonia Fonseca - 407-665-7133

..Motion/Recommendation

1. Approve the first amendment to the CRA Redevelopment and Construction Grant Agreement between Dick Baird, Inc., d/b/a Bill Ray Nissan, and the US 17-92 CRA, related to redevelopment of the property located at 2724 N US Hwy 17-92, extending the project completion date until December 31, 2016; or
2. Deny the first amendment to the CRA Redevelopment and Construction Grant Agreement between Dick Baird, Inc., d/b/a Bill Ray Nissan, and the N US 17-92 CRA, related to redevelopment of the property located at 2724 N US Hwy 17-92, extending the project completion date until December 31, 2016; or
3. Continue to a time and date certain.

..Background

The Applicant, Bill Ray Nissan, received CRA approval for the proposed redevelopment of the property located at 2724 N US Hwy 17-92, on December 10, 2013. Due to the significance of the project scope, the Applicant requested, and was granted, a modification to the agreement on September 9, 2014, extending the completion deadline to December 31, 2015.

Because of the length of time required for design and customary development approvals, the applicant has not been able to begin construction. Therefore, the applicant is seeking a second extension of time to adjust the completion deadline to December 31, 2016.

..Staff Recommendation

Staff recommends the CRA approve the first amendment to the CRA Redevelopment and Construction Grant Agreement between Dick Baird, Inc., d/b/a Bill Ray Nissan, and the US 17-92 CRA, related to redevelopment of the property located at 2724 N US Hwy 17-92, extending the project completion date until December 31, 2016.

..Board Date

6/4/15

Bill Ray Nissan



*Serving
Central
Florida
Since
1987*

April 29, 2015

Sonia Fonseca
US 17-92 CRA Program Manager
Economic Developer
1101 E. 1st Street
Sanford, Florida 32771

RE: CRA Grant extension

Dear Sonia,

Please accept this letter as an official request to extend the original completion date on the US 17-92 CRA Redevelopment Grant for Bill Ray Nissan to December 31, 2016. We have been proactively working diligently on finalizing the plans, engineering and now permitting so that we can move forward to complete this project.

Our current application for permitting is currently under review with Seminole County Planning & Development Division, David Sapia, Planning Coordinator.

If you have any questions or need any additional information please feel free to contact me.

Thank you in advance for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Ray, III".

William D. Ray, III
President

Cc: Commissioners;
Bob Dallari, John Horan, Brenda Carey, Lee Constantine, Carlton D. Henley

US 17-92 CRA REDEVELOPMENT GRANT AGREEMENT

THIS AGREEMENT is effective as of the 11th day of September, 20~~13~~¹⁴, by and between the US 17-92 COMMUNITY REDEVELOPMENT AGENCY, a public agency existing pursuant to Chapter 58 of the Seminole County Code, whose address is 1101 East First Street, Sanford, Florida 32771, (the "CRA"), and DICK BAIRD, INC. d/b/a BILL RAY NISSAN, a Florida corporation, whose address is 2724 North Highway 17-92, Longwood, Florida 32750, (the "COMPANY").

WITNESSETH

WHEREAS, the Board of County Commissioners of Seminole County, Florida (the "BOARD") has established the CRA in accordance with the Community Redevelopment Act of 1969, Chapter 163, Part III, Florida Statutes; in recognition of the need to address, prevent, and eliminate blighted conditions within the community; and

WHEREAS, the BOARD enacted an ordinance codified at Chapter 58 of the Seminole County Code adopting the US 17-92 Corridor Redevelopment Plan (the "PLAN") for the purpose of community redevelopment within the US 17-92 Community Redevelopment Area (the "AREA"); and

WHEREAS, the CRA is authorized to undertake and carry out community redevelopment projects and related activities (the "PROJECT") in accordance with Section 163.370, Florida Statutes; and

WHEREAS, the CRA has identified the need to eliminate blighted conditions, increase commercial activity, improve pedestrian safety, and provide job opportunities for area residents in the PLAN; and

WHEREAS, the US 17-92 Redevelopment Planning Agency (the "RPA") is empowered to review redevelopment projects, programs, and opportunities and to provide recommendations to the CRA as authorized by the Multiparty Interlocal Agreement Establishing the US 17-92 Redevelopment Planning Agency; and

WHEREAS, the RPA has reviewed the proposal for the construction project on the property located at 2724 North Highway 17-92, Longwood, Florida 32750 (the "PROJECT"), presented by COMPANY and has found the PROJECT consistent and complementary to the goals of the PLAN; and

WHEREAS, the PROJECT is consistent with the following strategies identified in the PLAN:

- **Goal:** Promote and provide a cohesive, economically sustainable, and functional built environment throughout the entire US 17-92 corridor.
 - **Objective 2:** Eliminate existing blight and prevent the continued degradation of physical and social environment within the CRA jurisdictional boundary and surrounding community.
 - **Policy 2.1:** Encourage privately-initiated rehabilitation of substandard and unsightly structures, signs, landscape and parking areas through available funding programs. Provide matching grants contingent upon design compliance with Corridor Redevelopment Master Plan redevelopment framework standards and perpetual maintenance agreement.
 - **Objective 4:** Develop strategies to focus economic redevelopment investment and employment opportunity investment by both public and private sectors.

- Policy 4.2: Develop incentives for redevelopment and new development that creates localized employment and new jobs within the CRA jurisdictional boundary.

WHEREAS, COMPANY is proposing to redevelop the property, located within the geographic boundaries of the AREA at 2724 North Highway 17-92, Longwood, Florida 32750, as described in Exhibit A, "Redevelopment/Construction Grant Application," attached hereto and incorporated herein, at an approximate cost of ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,750,000.00), which sum represents a significant capital investment, and;

WHEREAS, the CRA has determined that a grant investment exceeding the US 17-92 CRA Redevelopment and Construction Grant application guidelines is warranted to redevelop the Bill Ray Nissan dealership located at 2724 North Highway 17-92, Longwood, Florida 32750 because of the relative impact the facility will have on local employment and redevelopment of the US 17-92 Community Redevelopment Area corridor as a whole; and

WHEREAS, the CRA and COMPANY desire to enter into this Agreement for the purpose of establishing additional assurances to the CRA that expenditures of the CRA related to the PROJECT will produce a positive economic effect in the AREA as a result of COMPANY's activities in the AREA,

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

Section 1. Recitals.

(a) The above recitals are true and correct and form a material part of this Agreement upon which the parties have relied.

(b) The CRA finds and declares that it is in the public's best interest and serves a public purpose to award a CRA Redevelopment grant from the 17-92 Redevelopment Trust Fund to COMPANY in an amount not to exceed NINE HUNDRED EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$988,750.00) pursuant to the terms of this Agreement.

Section 2. Definitions.

(a) "PROJECT" includes all development, construction and redevelopment as proposed in Exhibit A and its attached supplemental Construction Proposal. COMPANY shall complete construction of the PROJECT no later than December 31, 2015. In the event construction is not complete by December 31, 2015, COMPANY may request an extension from the CRA. COMPANY shall have twelve (12) months after the completion date to submit documentation verifying that the terms of this Agreement and the work as outlined in Exhibit A have been met. Failure to comply with the time limits as outlined in this Agreement shall constitute a breach of this Agreement's terms and shall terminate the CRA's obligation to award grant funds to COMPANY.

(b) "Award Payout" for the PROJECT shall be made only after:

(1) COMPANY has received a Certificate of Occupancy for buildings on the property, if applicable or a Certificate of Completion and passed final inspections as required; and

(2) All Contractor Releases of Lien and paid receipts have been received and approved by the CRA.

The award upon completion of the PROJECT shall not exceed NINE HUNDRED EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS

(\$988,750.00). This amount represents one hundred percent (100%) of the total grant award. The award shall be as follows:

(A) Landscaping and Irrigation – not to exceed TWO HUNDRED FIFTY-FIVE THOUSAND EIGHT HUNDRED NINETY-ONE AND NO/100 DOLLARS (\$255,891.00).

(B) FIFTY percent (50%) of the eligible remaining cost of construction, to be applied to exterior improvements – not to exceed SEVEN HUNDRED THIRTY-TWO THOUSAND EIGHT HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$732,859.00).

Section 3. Representations by COMPANY. COMPANY represents and warrants to the CRA the following:

(a) COMPANY is duly organized and validly existing under the laws of the State of Florida and is authorized to do business in the State of Florida.

(b) COMPANY's officers have the corporate power, authority, and legal right to execute, deliver, and perform this Agreement. The execution, delivery, and performance of this Agreement by COMPANY have been authorized by all necessary corporate and shareholder action.

(c) COMPANY's Project Manager shall be William David Ray III, or his designee.

Section 4. Covenants of COMPANY. COMPANY hereby covenants with the CRA to do the following:

(a) COMPANY agrees to redevelop the property known as Bill Ray Nissan, located at 2724 North Highway 17-92, Longwood, Florida 32750, as more specifically described in Exhibit A.

(b) COMPANY agrees to satisfy the terms as described in Section 2 of this Agreement before requesting the disbursement of the award associated with satisfaction of the PROJECT terms. COMPANY will not request disbursement of the award funds until the terms and conditions of the PROJECT have been satisfied.

(c) COMPANY shall provide written verification, satisfactory to the CRA, demonstrating compliance with this Agreement.

(d) When the PROJECT is complete, COMPANY shall cause notice to be given to the CRA and will make any related documentation available for review and inspection by the CRA.

(e) COMPANY will ensure maintenance of the PROJECT property for a minimum of five (5) years after the PROJECT completion date. Failure to do so shall require a refund of the grant monies awarded pursuant to this Agreement in an amount commensurate with the cost of the unmaintained improvement(s), on a pro rata basis. Conveyance of the property shall not relieve COMPANY of the continuing obligation to maintain the PROJECT, however, COMPANY may, with written approval from the Community Redevelopment Agency, assign said obligation to its successor in interest.

(f) If requested, COMPANY agrees to grant an easement on its property located at 2724 North Highway 17-92, Longwood, Florida 32750 at no additional cost for construction of a LYNX Bus Shelter.

Section 5. Covenants of CRA. Upon submission of proof of satisfaction of the terms described in Section 2, in a manner satisfactory to the CRA, the CRA will cause to be issued a payment to COMPANY for demonstrated allowable costs incurred up to NINE HUNDRED EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$988,750.00) for redevelopment costs.

Section 6. Term.

(a) This Agreement shall become effective upon execution by the CRA and COMPANY and shall remain in effect through termination of this Agreement pursuant to and consistent with its terms.

(b) This Agreement will terminate upon completion of construction of all activities described in Exhibit A by COMPANY and upon satisfaction of the terms and conditions of this Agreement as evidenced by a report prepared by COMPANY and forwarded to the CRA outlining COMPANY's satisfaction of the terms and conditions of this Agreement, and through Award Payout by the CRA.

Section 7. Reports. Within twelve (12) months of completion of the PROJECT, COMPANY shall provide a Report to the CRA demonstrating COMPANY's satisfaction of the terms and criteria listed in Exhibit A.

Section 8. Force Majeure. In the event any party hereunder fails to satisfy a requirement imposed in a timely manner due to a hurricane, flood, tornado, or other Act of God or force majeure, then said party shall not be in default hereunder; provided, however, that performance shall recommence upon such event ceasing its effect.

Section 9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors in interest, transferees, and assigns of the parties.

Section 10. Assignment. This Agreement shall not be assigned by either party without the prior written approval of the other.

Section 11. Public Records. COMPANY shall allow public access to all documents, papers, letters, or other materials which have been made or received by COMPANY in conjunction with this Agreement.

Section 12. Records and Audits

(a) COMPANY shall maintain in its place of business all books, documents, papers, and other evidence pertaining to the work performed under this Agreement. Such records shall be and remain available at COMPANY's place of business at all reasonable times during the term of this Agreement and for five (5) years after termination of this Agreement.

(b) COMPANY agrees that the CRA or its duly authorized representatives shall, until the expiration of five (5) years after termination of this Agreement, have access to examine any of COMPANY's books, documents, papers, and records involving transactions related to this Agreement for review and audit purposes. COMPANY agrees that payments made under this Agreement shall be subject to reduction for amounts charged which are found, based on audit examination, not to constitute allowable costs.

(c) All required records shall be maintained until an audit has been completed and all questions arising from it are resolved or until five (5) years after termination of this Agreement, in writing, and submission of the final invoice, whichever is sooner. COMPANY will provide proper facilities for access to and inspection of all required records. If any litigation or claim is commenced prior to expiration of the five (5) years and extends beyond such time, the records shall be maintained until resolution of the litigation or claim, and any person duly authorized by COUNTY shall have full access to and the right to examine the records during such time.

Section 13. Notices. Whenever either party desires to give notice unto the other, notice shall be sent to:

For CRA:

CRA Program Manager
Seminole County Development Services Department
US 17-92 Community Redevelopment Agency
1101 East First Street
Sanford, Florida 32771

For COMPANY:

Dick Baird, Inc. d/b/a Bill Ray Nissan
Attn: William David Ray, III, President
2724 North Highway 17-92
Longwood, Florida 32750

Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices or invoices. All notices shall be effective upon receipt.

Section 14. Indemnity and Insurance.

(a) To the extent allowed by law, COMPANY shall indemnify, defend and hold harmless the CRA, its agents, employees, and elected and appointed officials, from and against all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description whatsoever, including claims for property damage and claims for injury to or death of persons arising out of or resulting from COMPANY's performance of its obligations under this Agreement, and which are caused in whole or in part by COMPANY, its agents, employees or subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. COMPANY may obtain insurance naming the CRA as a named insured to provide indemnification. Said insurance must be approved by the CRA or its designee.

(b) The parties further agree that nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available to such parties under the laws of the State of Florida, nor as a waiver of sovereign immunity of the CRA beyond the waiver provided for in Section 768.28, Florida Statutes.

(c) COMPANY shall provide necessary workers' compensation coverage and unemployment compensation for its employees, contractors and subcontractors.

Section 15. Conflict of Interest.

(a) COMPANY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the CRA or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) COMPANY hereby certifies that no officer, agent, or employee of the CRA has any material interest (as defined in Section 112.312, Florida Statutes) either directly or indirectly, in the business of COMPANY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, COMPANY hereby agrees that monies received from the CRA pursuant to this Agreement will not be used for the purpose of lobbying the legislature or any other State or Federal agency.

Section 16. Compliance with Laws and Regulations. In performing under this Agreement, the parties shall abide by all laws, statutes, ordinances, rules, and regulations pertaining to or regulating the performance set forth herein, including those now in effect and hereafter adopted. Any material violation of said laws, statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle the non-violating party to terminate this Agreement immediately upon delivery of written notice of termination.

Section 17. Equal Opportunity Employment.

(a) COMPANY agrees that it will not discriminate against any contractor, employee, or applicant for employment or work under this Agreement because or on account of race, color, religion, sex, age, national origin, or disability and will ensure that applicants and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: retention; award of

contracts; employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) COMPANY agrees that it will comport all of its activities with the provisions of Chapter 760, Florida Statutes.

Section 18. Employee/Company Status.

(a) Persons employed or retained by COMPANY in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to the CRA's officers and employees either by operation of law or by the CRA.

(b) COMPANY assumes total responsibility for salaries, employment benefits, contractual rights and benefits, contract payments, and Federal, State and local employment taxes, if any, attributable to COMPANY's personnel or contractors and agrees to indemnify and hold the CRA harmless from any responsibility for same.

(c) In performing this Agreement, planning, developing, constructing, equipping, and operating the PROJECT, or carrying out any of the activities to be carried out by COMPANY, COMPANY will be acting independently, in the capacity of an independent entity and not as a joint venturer, partner, associate, employee, agent, or representative of the CRA.

Section 19. No Third-Party Beneficiaries. This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns, including any successor in interest to COMPANY's interest in the PROJECT, and is not intended to and shall not benefit any third party. No third party shall have any rights hereunder as a result of this Agreement or any right to enforce any provisions of this Agreement.

Section 20. Contingent Fees/Conflicting Employment.

(a) COMPANY covenants that it has employed and retained only bona fide employees working for COMPANY, attorneys, and consultants to solicit or secure this Agreement. COMPANY warrants that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working for COMPANY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of making of this Agreement.

(b) COMPANY agrees that at the time of execution of this Agreement it has no retainer or employment agreement, oral or written, with any third party relating to any matters which adversely affect any interest or position of the CRA. During the term of this Agreement, COMPANY shall not accept any retainer or employment from a third party whose interests appear to be conflicting or inconsistent with those of the CRA.

Section 21. Governing Law/Attorneys Fees. This Agreement shall be construed and interpreted according to the laws of the State of Florida.

Section 22. Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties. It is recognized by both the CRA and COMPANY that they have had the opportunity to contribute substantially and materially to the preparation of this Agreement.

Section 23. Constitutional and Statutory Limitation on Authority of the CRA. The terms and conditions of this Agreement placed upon the CRA are applicable only to the extent they are within and consistent with the constitutional and statutory limitations on the authority of the CRA. Specifically, the parties acknowledge that the CRA is without authority to grant or pledge a security interest in any of the CRA's revenue sources or property.

Section 24. Events of Default/Remedies.

(a) For purposes of this Agreement, "Event of Default" shall mean any of the following:

(1) COMPANY shall misapply or cause the misapplication of CRA funds or credits received pursuant to this Agreement.

(2) Any representation or warranty made by COMPANY herein or in any statement, invoice, or certificate furnished to the CRA in connection with the performance of this Agreement proves to be untrue in a material respect as of the date of issuance or making thereof and shall not be corrected or brought into compliance within thirty (30) days after written notice thereof to COMPANY by the CRA.

(3) COMPANY shall materially breach any covenant contained in this Agreement and such breach shall not be corrected or cured within thirty (30) days after written notice thereof to COMPANY by the CRA, provided however, that the CRA may declare a lesser time period in the event that it finds, in its sole and absolute discretion, that such lesser period is necessary to protect the public health, safety, or welfare.

(4) COMPANY shall fail to meet the time deadline as specified in Section 2(a) of this Agreement.

(5) COMPANY fails to provide to the CRA the timely, written verification, satisfactory to the CRA, of its performance obligations herein.

Section 25. Counterparts. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

Section 26. Headings. All sections and descriptive headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

Section 27. Time. Time is of the essence of this Agreement.

Section 28. Severability. If any provision, term, or clause of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, said determination shall not, in any way, effect the obligation of the parties as provided for or referred to herein and, to that end, the provisions of this Agreement shall be deemed severable. However, such invalidity or unenforceability shall preclude the continuing effect of this Agreement if a failure of consideration were to occur.

Section 29. Entire Agreement.

(a) This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

(b) No waiver or consent to any departure from any term, condition, or provision of this Agreement shall be effective or binding upon any party hereto unless such waiver or consent is in writing, signed by an authorized officer of the party giving the same, and delivered to the other party.

(c) COMPANY agrees that no representations have been made by the CRA in order to induce COMPANY to enter into this Agreement other than as expressly stated in this Agreement.

[Balance of this page left intentionally blank; signature on next page]

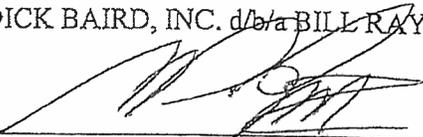
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

ATTEST:



Secretary
[CORPORATE SEAL]

DICK BAIRD, INC. d/b/a BILL RAY NISSAN

By: 

WILLIAM DAVID RAY, III, President

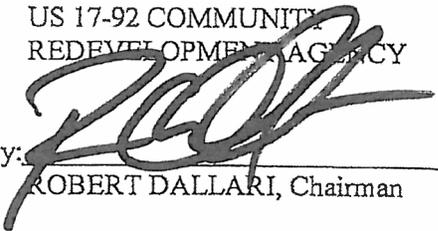
Date: 5-1-14

ATTEST:



MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

US 17-92 COMMUNITY
REDEVELOPMENT AGENCY

By: 

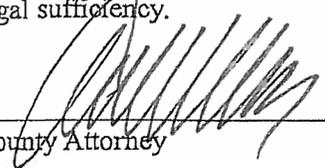
ROBERT DALLARI, Chairman

Date: 9-11-14

For the use and reliance
of Seminole County only.

As authorized for execution by the US 17-92 CRA
at its September 9, 20 14,
regular meeting.

Approved as to form and
legal sufficiency.



County Attorney

Attachment:

Exhibit A – Redevelopment/Construction Grant Application

MCC/sjs
3/4/14

P: User: Legal Secretary CSB Economic Development CRA-17-92 CRA Dick Baird (Bill Ray Nissan) Mar04(14) clean.doc