

SPRA  
July 12/11/09  
RA-2010-43  
540

REDEVELOPMENT AGENCY OF  
THE CITY OF SAN DIEGO

RESOLUTION NUMBER R- 04475

DATE OF FINAL PASSAGE DEC 09 2009

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO APPROVING THE SETTLEMENT AGREEMENT AND MUTUAL RELEASES AND ASSOCIATED ACTIONS IN CONNECTION WITH CLAIMS ASSERTED RELATING TO THE AGREEMENT FOR PROCESSING A REDEVELOPMENT PLAN AND LAND USE ENTITLEMENTS AND THE CASH DEPOSITORY AGREEMENT ENTERED INTO BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AND THE SAN DIEGO STATE UNIVERSITY FOUNDATION.

WHEREAS, on or about December 3, 1991, San Diego State University Foundation [Foundation] and the Redevelopment Agency of the City of San Diego [Agency] entered into an Agreement for Processing a Redevelopment Plan and Land Use Entitlements [1991 Agreement] pertaining to the proposed redevelopment of the area in the City of San Diego [City] designated as the "Site" on the map attached to the 1991 Agreement as Exhibit "A" [Project Area], which Agreement provided for certain deposits and other payments to be made by the Foundation in connection with the proposed redevelopment plan, and, under the circumstances specified therein, reimbursement by the Agency to the Foundation of such amounts [Foundation Reimbursement]; and

WHEREAS, on or about March 3, 2005, the Foundation and the Agency entered into a Cash Depository Agreement [CDA] with reference to that certain parcel of property located at 5840-5846 Hardy Avenue in the City of San Diego, California [Property] and, pursuant to the CDA, the Foundation provided funds to cover the costs associated with the acquisition of the Property; and

WHEREAS, the CDA provided that, in the event a Paseo Project Disposition and Development Agreement was not signed by the Foundation and the Agency on or before January 1, 2006, and that Agency, on or before September 1, 2007, had not disposed of the Property to a third party, the Foundation had the right of first offer to purchase the Property at a cost equal to the fair market value of the Property less the amounts advanced by the Foundation for the Agency's purchase of the Property [Foundation Right of First Offer]; and

WHEREAS, on or about March 10, 2008, the Foundation provided to the Agency written notice of exercise of the Foundation Right of First Offer; and

WHEREAS, on or about July 1, 2008, the Agency provided written notice to the Foundation alleging that the Foundation was in breach of both the 1991 Agreement and the CDA and that the Agency had no obligation: (i) to the Foundation with respect to the Foundation Right of First Offer; or (ii) to pay to the Foundation any Foundation Reimbursement pursuant to the 1991 Agreement; and

WHEREAS, on or about September 5, 2008, the Foundation caused to be filed against the Agency a complaint [Complaint] in San Diego County Superior Court, Case No. 37-2008-00091165-CU-BC-CTL wherein the Foundation alleged causes of action against the Agency for specific performance with respect to the Foundation Right of First Offer and declaratory relief [Action], and, thereafter, on or about February 26, 2009, the Agency and the City filed a cross-complaint which, as subsequently amended [Second Amended Cross-Complaint], alleges several causes of action against both the Foundation and the Board of Trustees of California State University [CSU]; and

WHEREAS, on or about June 24, 2009, the Foundation filed an administrative claim against the Agency for the Foundation Reimbursement in an amount estimated to be, including

principal and interest, in excess of \$3,400,000 [Reimbursement Claim] and, on or about August 13, 2009, the Agency rejected the Reimbursement Claim; and

WHEREAS, representatives of the Agency, City, Foundation and CSU each agree that it is in each party's best interest to settle certain claims made in the Complaint, Action, and Second Amended Cross-Complaint in connection with the 1991 Agreement and the CDA and that the Agency and Foundation terminate the 1991 Agreement and the CDA; and

WHEREAS, as proposed in the Settlement Agreement and Mutual Release and subject to releases and waivers of claims by the Agency, City, Foundation and CSU, the Agency and Foundation each agree to voluntarily terminate the 1991 Agreement and the CDA upon the transfer of Property, and the Agency further agrees to transfer fee title of the Property to the Foundation by Grant Deed, to assign all leases of the Property to the Foundation pursuant to a recordable Assignment of Leases, to pay half (1/2) of all costs and fees associated with the closing on the transfer of fee title of the Property to the Foundation, and to pay a total amount of Seven Hundred Fifty Thousand Dollars (\$750,000) to the Foundation as settlement of claims before June 30, 2010, or alternatively to pay a total amount of \$750,000 plus simple interest as calculated in the Settlement Agreement to the Foundation as settlement of claims from and after June 30, 2010 but before June 30, 2012; and

WHEREAS, in accordance with the California Community Redevelopment Law, including California Health and Safety Code Section 33431, the Agency duly conducted a public hearing on March 1, 2005, for the purpose of considering the approval of the CDA and the proposed transfer of the Property to the Foundation; NOW, THEREFORE,

BE IT RESOLVED, by the Redevelopment Agency of the City of San Diego [Agency] as follows:

1. That the Agency approves the Settlement Agreement and Mutual Releases [Settlement Agreement] effective October 12, 2009 by and among San Diego State University Foundation [Foundation], Agency, City of San Diego [City], and Board of Trustees of the California State University [CSU], thereby terminating the Cash Depository Agreement [CDA] and the Agreement for Processing a Redevelopment Plan and Land Use Entitlements [1991 Agreement], previously entered into by and between the Agency and the Foundation, upon the Agency's transfer of the Property (defined below) to the Foundation.
2. That the Agency approves the Agency's transfer of fee title of property located at 5840-5846 Hardy Avenue, City of San Diego, California, [Property] to the Foundation by Grant Deed.
3. That the Agency approves the Grant Deed and the recordable Assignment of Leases referenced in the Settlement Agreement.
4. That the Agency authorizes the Agency Executive Director or designee to execute the Settlement Agreement, the Grant Deed, and the recordable Assignment of Leases; a copy of each, when executed by the Agency, shall be placed on file in the office of the Secretary of the Agency as Document Nos. 04475a, 04475b, and 04475c.
5. That the Agency approves the Agency's payment and expenditure of half (1/2) of all costs and fees associated with the closing on the transfer of fee title of the Property to the Foundation.
6. That the Agency approves the Agency's payment and expenditure of a total amount of Seven Hundred Fifty Thousand Dollars (\$750,000) to the Foundation as settlement of claims before June 30, 2010, or alternatively the Agency's payment and expenditure of a total

amount of \$750,000 plus simple interest as calculated in the Settlement Agreement to the Foundation as settlement of claims from and after June 30, 2010 but before June 30, 2012.

7. That the Agency authorizes the Agency Executive Director or designee, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the Settlement Agreement and this Resolution and to administer the Agency's obligations, responsibilities and duties to be performed thereunder.

APPROVED: JAN I. GOLDSMITH, General Counsel

By Kendall D. Berkey  
Kendall D. Berkey  
Deputy General Counsel

KDB:nda  
11/20/09  
Or.Dept: Redev.Agency  
RA-2010-43  
MMS#7230  
Comp. R-2010-391

I hereby certify that the foregoing Resolution was passed by the Redevelopment Agency of the City of San Diego, at this meeting of DEC 07 2009

REDEVELOPMENT AGENCY

By Jeannette Santos  
Jeannette Santos, Deputy Secretary

Approved: 12-9-09  
(date)

JSL  
JERRY SANDERS, Executive Director

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Executive Director

**The City of San Diego  
COMPTROLLER'S CERTIFICATE**

**CERTIFICATE OF UNALLOTTED BALANCE**

ORIGINATING CC 300002855  
DEPT. \_\_\_\_\_  
NO: \_\_\_\_\_

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \_\_\_\_\_ \$750,000.00

Vendor: San Diego State University Foundation

Purpose: Authorizing the expenditure of funds for the settlement agreement with San Diego State University Foundation and the Board of Trustees of the California State University. The funds will be paid from the Agency's College Community Redevelopment Project area.

Date: November 25, 2009 By: Esther Musau

COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Fund	Funded Program	Internal Order	Functional Area	G/L Account	Business Area	Cost Center	WBS	Original Amount
	300079	930300301000	930300301101	Other-0000022-NS	590109	2230	2230300011		\$750,000.00
TOTAL AMOUNT									\$750,000.00

FUND OVERRIDE

CC 300002855

Passed by the Redevelopment Agency of The City of San Diego on DEC 07 2009, by the following vote:

Agency Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

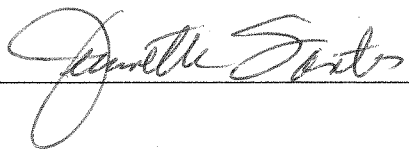
Date of final passage DEC 09 2009.

AUTHENTICATED BY:

JERRY SANDERS  
Executive Director of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
Secretary of The City of San Diego, California.

By , Deputy

Office of the Redevelopment Agency, San Diego, California

Resolution Number R- 04475