

RESOLUTION NUMBER R- 299406

ADOPTED ON JUN 29 2004

A RESOLUTION OF COUNCIL OF THE CITY OF SAN DIEGO  
APPROVING THE REPLACEMENT TRANSFER  
AGREEMENT AND ESCROW INSTRUCTIONS BETWEEN  
THE CITY OF SAN DIEGO, THE REDEVELOPMENT  
AGENCY OF THE CITY OF SAN DIEGO, CATELLUS  
DEVELOPMENT CORPORATION AND THE MUSEUM OF  
CONTEMPORARY ART, SAN DIEGO.

WHEREAS, in 1993 the City and Agency executed an Amended and Restated Development Agreement and an Amended and Restated Owner Participation Agreement, respectively, with Catellus which revised development entitlements first granted in 1983 to Catellus's predecessor for the approximately 17 acres in the environs of the Santa Fe Depot. The 1993 Agreements revised the 1983 Agreements to accommodate transit related needs of MTDB and NCTD and updated the development entitlements to bring them into conformance with the Centre City Community Plan adopted in 1992; and

WHEREAS, under the terms of the Catellus Development/Owner Participation Agreements, as amended over time, Catellus was required, by December 7, 2003, to seismically retrofit and complete base building improvements to the Baggage Building and to then transfer title to the Baggage Building to the City or to any governmental agency or non profit entity designated by the City for use as a museum or other cultural use. Catellus was obligated to install new curb, gutter, sidewalks, etc. on the entire Kettner frontage; and

WHEREAS, the transfer of the Baggage Building for a cultural use at a minimum must include the building itself, its colonnade, the land under the building and the colonnade, an

access easement through the Breezeway connecting the Baggage Building to the Depot itself, and street frontage along Kettner Boulevard for the length of the Baggage Building; and

WHEREAS, Catellus's obligations for the level of improvements to the Baggage Building include seismic retrofit for cultural use, and "shell improvements" including stub out of electricity, water, sewer and telephone to the interior; structurally sound walls and roof; curb, gutter and sidewalk improvements on the Kettner frontage; and repair of the facade. Obligations of the user of the Baggage Building, therefore, would be typical tenant improvements and specialized improvements for the new use; and

WHEREAS, on December 10, 2002, the City Council authorized a Transfer Agreement and Escrow Instructions with the City of San Diego, Catellus and the Museum of Contemporary Art, San Diego providing for the transfer for the Baggage Building (and Catellus' transfer of the REA property within the site) to the City of San Diego and the City's lease of the properties to the Museum of Contemporary Art, San Diego for a term ending July 31, 2091; and

WHEREAS, such Transfer Agreement and Escrow Instructions has not been executed by the parties and the City of San Diego now desires to designate the Museum of Contemporary Art, San Diego [Designee] as transferee of the properties instead of the City of San Diego; and

WHEREAS, Catellus has submitted to the City copies of a proposed replacement Transfer Agreement and Escrow Instructions providing for the transfer of the Baggage Building and REA property to Designee and providing for a City option for the City to acquire the properties at no cost on or after July 31, 2091, or earlier in the event of a default by Designee; and

WHEREAS, City staff has reviewed the proposed replacement Transfer Agreement and Escrow Instructions and recommends that the City enter into a replacement Transfer Agreement and Escrow Instructions; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the terms and conditions of the proposed replacement Transfer Agreement and Escrow Instructions are approved.

2. That the City Manager, or his designee, is authorized to execute for and on behalf of the City the replacement Transfer Agreement and Escrow Instructions. A copy of the replacement Transfer Agreement and Escrow Instructions is on file in the office of the City Clerk as Document No. 299406

3. That the City Manager, or his designee, is authorized on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the replacement Transfer Agreement and Escrow Instructions.

APPROVED: CASEY GWINN, City Attorney

By



Elisa A. Cusato  
Deputy City Attorney

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06/09/04  
Or.Dept: CCDC  
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