

RESOLUTION NUMBER R- 303492

DATE OF FINAL PASSAGE MAR 12 2008

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SAN DIEGO APPROVING A FIRST AMENDMENT TO  
PURCHASE AND FINANCE AGREEMENT FOR  
COMMUNITY FACILITIES DISTRICT NO. 3 (LIBERTY  
STATION)

WHEREAS, the City Council of City of San Diego [City Council] has heretofore adopted Resolution No. R-296472 on May 7, 2002, stating its intention to form Community Facilities District No. 3 (Liberty Station) [District] and approving a Purchase and Finance Agreement between the City of Diego [City] and McMillin-NTC, LLC, a Delaware limited liability company [Developer] with respect to the facilities to be acquired by the District from the Developer; and

WHEREAS, the Purchase and Finance Agreement was filed in the Office of the City Clerk as document No. RR-29642, as supplemented by letter agreement form the City dated June 11, 2004 [Agreement]; and

WHEREAS, Exhibit A to the Agreement provides a description of the public facilities that may be acquired by the District, which was modified, in part, by letter agreement from the City dated June 11, 2004; and

WHEREAS, in order to permit future reductions in the amount of special taxes to be levied within the District, the City and the Developer desire to amend the Agreement by entering into a First Amendment to Purchase and Finance Agreement [Amendment] to amend the list of public facilities that may be acquired by the District by replacing Exhibit A to the Agreement in its entirety with Exhibit A to the Amendment; and

WHEREAS, the form of the Amendment has been presented to this City Council and is on file with the City Clerk as Document No. R-303492, and

WHEREAS, the District has heretofore issued its Special Tax Bonds Series A of 2006 in the aggregate principal amount of \$16,000,000 [2006 Bonds] to acquire a number of the public facilities listed in Exhibit A to the Agreement; and

WHEREAS, the District intends to issue a second and final series of special tax bonds, to be designated as the "Special Tax Bonds Series A of 2008" in an aggregate principal amount not to exceed \$4,250,000 [2008 Bonds], to acquire certain public facilities listed on Exhibit A to the Agreement not previously financed with proceeds of the 2006 Bonds and special tax proceeds of the District; and

WHEREAS, the qualified voters of Improvement Area No. 1 and Improvement Area No. 2 have heretofore approved the rate and method of apportionment of special taxes for Improvement Area No. 1 and the rate and method of apportionment of special taxes for Improvement Area No. 2 [Rate and Method] at elections held on June 25, 2002, the results of which were certified by the City Council as Resolution No. R-296743; and

WHEREAS, each Rate and Method provides that the City Council may, in any fiscal year, levy proportionately less than 100 per cent of the assigned special tax under each Rate and Method when (1) the City Council is no longer required to levy a special tax pursuant the method of apportionment in the Rate and Method, (2) all authorized bonds of the District have been issued or the City Council has covenanted not to issue other parity bonds (other than refunding bonds), and (3) all facilities identified in the Agreement have been acquired [Reduction Test];  
and

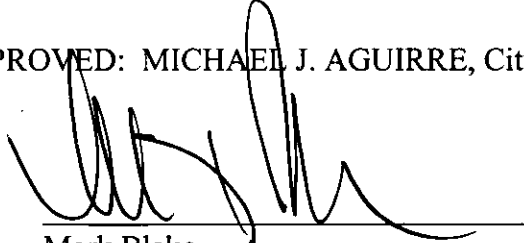
WHEREAS, the Amendment will amend Exhibit A to the Agreement to provide a description of the aquatic center that may be financed by the District with special tax proceeds and to provide that part (3) of the Reduction Test will be satisfied upon disbursement to the Developer of the maximum amount specified in the Amendment; NOW, THEREFORE,

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

1. The above recitals are true and correct.
2. The Amendment, a copy of which is on file with the City Clerk as document No. R-303492, is hereby approved. Any one of the Mayor, the Chief Operating Officer of the City or the Chief Financial Officer of the City or the written designee of one of the foregoing [Authorized Officers] shall have the authority to execute the Amendment in substantially the form presented at this meeting, with such additions thereto and changes therein as the officer or officers executing the same deem necessary to cure any ambiguity or defect therein if such addition or change does not materially alter the substance or content thereof. Approval of such changes shall be conclusively evidenced by the execution and delivery of the Amendment by any one of the Authorized Officers.
3. Other than the amendment of Exhibit A as provided in the Amendment, no other provision of the Agreement shall be amended and the Agreement shall remain in full force and effect.
4. This Resolution shall be effective upon its adoption.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Mark Blake  
Chief Deputy City Attorney

MB:jb  
02/26/2008  
Or.Dept:Debt Mgmt.  
R-2008-724

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 3/11/08.

ELIZABETH S. MALAND  
City Clerk

By *May Zunaya*  
Deputy City Clerk

Approved: 3-12-08  
(date)

*JSL*  
JERRY SANDERS, Mayor

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

\_\_\_\_\_  
JERRY SANDERS, Mayor